August 17th, 2007
Commission's Secretary
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
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Re: WC Docket No. 06-210
CCB/CPD 96-20

Opposition to AT&T Motion for Sanctions
Against Alfonse Inga and Petitioners
& Motion for Sanctions Against AT&T for Frivolous Request for Sanctions

Comments of 4 Petitioners in Case 06-210:
800 Discounts, Inc., One Stop Financial, Inc.,
Winback & Conserve Program, Inc. and Group Discounts, Inc
&
Tips Marketing Services, Corp

INTRODUCTION

I Alfonse G. Inga , president of Tips Marketing Services, Corp, (Tips) certify to all of Tips involvement with the FCC regarding IRS letters.

Although the FCC has stated -----prior to AT&T's July 18th 2007 filing----- in Ms Shetler's email to all parties, that AT&T's motion and Mr Kearney's motions will not be addressed by the FCC, petitioner's and Tips can not allow AT&T to falsely smear Mr Inga or his companies on the FCC online server viewable to the world. Therefore petitioners have countered each of AT&T's

alleged misconduct assertions of petitioners and Tips. The Commission should however consider the comments that are geared towards resolution of the tariffed issued before it.

Before Tips and petitioners counter AT&T's July 18th 2007 comments petitioners wish to provide the following which shows that AT&T understood that "All Obligations" did not include the transferor's revenue commitment/S&T obligation in the 1995 version of 2.1.8

See the FCC's 2003 Decision Exhibit B in petitioners 9/27/06 FCC filing. Look at pg. 6 n.46 which is the Section 2.1.8 in Jan 1995: Here for your convenience:

> Transfer or Assignment – WATS, including "**ANY"** associated telephone number**(s),** may be transferred or assigned to a new Customer, provided that:
>
> A. The Customer of record (former Customer) requests in writing that the Company transfer or assign WATS to the "new Customer".
>
> B. The "new Customer" notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).
>
> C. The Company acknowledges the transfer or assignment in writing. The acknowledgement will be made within 15 days of receipt of notification.
>
> The transfer or assignment does not relieve or discharge the former Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable minimum payment period(s). When a transfer or assignment occurs, a Record Change Only Charge applies.

Despite the fact that tariffs must be explicit AT&T asserts that the phrase "All Obligations" in the Jan 1995 version of section 2.1.8 encompasses revenue commitments and associated S&T obligations----petitioners of course disagree.

AT&T and Petitioner's however both agree that the only two obligations actually enumerated within section 2.1.8: [(1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).] do not encompass the revenue commitment /S&T obligations.

The denied "traffic only" transfer took place in Jan 1995 and by February AT&T's tariff revision person Dave Golden was prospectively changing section 2.1.8. See within petitioners 9/27/06 filing at exhibit K a page marked JA 100 on the lower right hand corner. This is a proposed revision to Tariff No. 2 that was proposed on 2/9/95 to the FCC's RL Smith by AT&T's Mr Golden.
See at 2.1.8 (B) the revised language proposed that has been highlighted with bold and underline:

> The "new Customer" notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s), **the unexpired portion of any term of service and usage and/or revenue commitment(s).**

AT&T did not seek to clarify that the phrase "ALL OBLIGATIONS" encompasses something different than what was in 2.1.8 in Jan 1995. AT&T simply added the obligation to the list of what all obligations encompassed and it was filed as a prospective change designated by Tariff code symbol "C" for change—not "T" for clarification as mandated (by the Federal Composition of Tariffs Law exhibit Q in petitioners 9/27/06 filing)

Now look at petitioner's exhibit P within its 9/27/06 filing which is the November 1995 version of 2.1.8. Notice that AT&T added yet another obligation to what it proposed in February 1995 (a month after the denied petitioner request:

> The "new Customer" notifies the Company in writing [USING THE SAME TRANSFER OF SERVICE FORM SIGNED BY THE CURRENT CUSTOMER] that it agrees to assume all obligations of the former Customer **AS OF THE EFFECTIVE DATE** of the transfer. These obligations include: **FOR EXAMPLE** (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s), **the unexpired portion of any term of service and usage and/or revenue commitment(s), AND ANY APPLICABLE SHORTFALL OR TERMINATION LIABILITY(IES)**

POINT ONE:

If AT&T clearly understood what was encompassed within the phrase ALL OBLIGATIONS why did it "update" from February to November the additional obligation:

AND ANY APPLICABLE SHORTFALL OR TERMINATION LIABILITY(IES) to the list? Because AT&T understood there was never anything really encompassed within the phrase "All Obligations". AT&T simply made this up because it initially asserted that S&T obligations were encompassed within the second obligation:

> the unexpired portion of any applicable minimum payment period(s),

The FCC in 1995 told AT&T "NO WAY" when it asserted this:

See petitioners exhibit M filed 9/27/06 marked on the bottom of the page as JA 117 which are the Commissions FOIA notes.

> Secondly, the language now talks about assuming obligations and says these obs include (but does not say "but not limited to") out indebted of serv and unexpired portion of min pay period(s). It says nothing about tp or CT oble and Tariff 2 refs to min pay period talk about min payment period is 1 day for WATS (which includes cl 800) and for all other 800 services it would seem- 6.2.A. and 2.5.5. And charges applicable for min payment period includes recurring charge(s), nonrecurring charge(s) and/or special construction charge(s). Moreover, in proposed revisions, ATT seems to leave this out of the item 5 location whereas they have it in both 2 and 5 for Tariff 1 already giving some credence to the **fact they see this as something new and additional**. Moreover, the unexpired portion of any applicable min pay period **would not seemingly include unexpired portion of any term of service and usage or rev commit but has its own unique meaning and, therefore, the provision about the term plan and commitments being included as part of the min pay period is conflicting** and we find in favor of customers in cases of conflicts.

See petitioners FCC filing Date Received/Adopted: 05/11/07which extensively details that section 2.1.8's second obligation:

> the unexpired portion of any applicable minimum payment period(s),

does not encompass the revenue commitment/S&T obligation.

So obviously AT&T in Jan 1995 could not have believed that S&T obligations were encompassed with a phrase "ALL Obligations" because AT&T was still arguing to the FCC a

moth after the denied "traffic only" transfer that S&T obligations were encompassed within 2.1.8's second enumerated obligation:

the unexpired portion of any applicable minimum payment period(s),

POINT TWO:

The fact that AT&T added another obligation in November 1995 to what it added to 2.1.8 in February 1995 shows AT&T absolutely knew in Jan 1995 that the phrase "all obligations" had no weight at all to which obligations are transferred.

POINT THREE

Notice the additional language added in the November 1995 version that was not in the Jan 1995 version nor even the February 1995 proposed changes made by AT&T's tariff man Dave Golden:

AS OF THE EFFECTIVE DATE of the transfer

Both the Jan 1995 2.1.8 and the February 1995 proposed revision state:

at the time of transfer or assignment

Because petitioners traffic only transfer was done in Jan 1995 AT&T had only 15 days from the

time of transfer or assignment

to complete the transaction and it failed to do so as it can not refute that the first contact AT&T made with petitioner was the Mr Whitmer letter of February 6th 1995 (exhibit X in 9/27/06 filing) which is more than 15 days from the order submission date of Jan 13th 1995 (exhibit F in 9/27/06 filing). Therefore under section 2.1.8's 15 day provision with para "C" of 2.1.8 AT&T could not even question the transfer. This is why AT&T changed the language in 2.1.8 in November 1995.

In short AT&T's bogus claim that "ALL Obligations" meant to AT&T in Jan 1995 to transfer S&T obligations is absolutely false as it argued S&T was within

the unexpired portion of any applicable minimum payment period(s),

If AT&T was confused that just means the tariff was not explicit and AT&T loses anyway under the law.

Point Four:

Even after AT&T prospectively added all of the following obligations to 2.1.8(b)'s list in November 1995:

> These obligations include: FOR EXAMPLE (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s), **the unexpired portion of any term of service and usage and/or revenue commitment(s), AND ANY APPLICABLE SHORTFALL OR TERMINATION LIABILITY(IES)**

This still does not mean that the revenue commitment and S&T obligations transfer on a "traffic only" transfer. What obligations transfer –as AT&T counsel Mr Carpenter stated- depend upon what is transferred (traffic only or plan).

Petitioner's 1/31/07 FCC filing on pages 115-120 paragraphs 293-307 show with exhibits that the revenue commitment stays on the transferors plan on a "traffic only" transfer despite the list of obligations and the phrase "all obligations".

Lets us Now Address AT&T's July 18th 2007 Comments:

If AT&T had started its comments with "*Once Upon A Time"* it would have been more in keeping with the "tale" it has provided the FCC. Petitioners will counter AT&T's comments page by page:

AT&T footnote 1

> It is perfectly clear that the petitioners in this proceeding and Tips Marketing are mere alter egos of Mr. Inga. See infra pp. 10-11. Accordingly, **AT&T has dispensed with any pretext that petitioners and Tips Marketing are distinct legal entities** operating for their own (as opposed to Mr. Inga's) interests and refers instead to Mr. Inga directly.

The only thing that is perfectly clear is that AT&T presents **no evidence** contrary to the fact that Tips Marketing Services, Corp (Tips) and the 4 Petitioner's are all separate legal entities. AT&T also presents no evidence that Mr Inga personally is involved in these proceedings before the IRS, Courts or the FCC. It makes no difference how many employees each company has, as a corporation by law is a separate legal entity. Tips gains if the shortfall charges were legitimately applied in June 1996 and the petitioners gain if the shortfall charges are determined by the FCC as not permissible or applied unlawfully. While AT&T can simply state that:

"AT&T has dispensed with any pretext that petitioners and Tips Marketing are distinct legal entities"

The FCC can not dispense with the facts that Tips is a separate legal entity and not a party to case 06-210.

AT&T's Assertion that Tips went to Ms. Lee's Office

Multiple Times is a Gross Misrepresentation

AT&T page 2

> Mr. Inga claims that he had a single, brief encounter with Ms. Lee of the IRS's Mountainside, N.J., office, in which she allegedly reviewed a letter from him and, after "several minutes" in her cubicle, "proceeded to stamp and fax" the letter he wrote, advising him that she did not place the letter on IRS letterhead because "'that's the way we do it.'" *Id.* at 12-13. Through this recitation, Mr. Inga seeks to create the impression that he reasonably believed the letter he wrote was an "official" IRS statement. **The truth, however, is that Mr. Inga went to Ms. Lee's office multiple times in a single day seeking to persuade her to type his letter on IRS letterhead, but she repeatedly refused to do so**. Letter of Roy Schwarmann, IRS, to Jeffrey Tutnauer, AT&T Corp. (July 10, 2007) (attached hereto as Exh. 22) at 1.

The facts show that this is a complete fabrication.

Mr Schwarman's certification states that Mr Inga went to the IRS office multiple times in a single day, he states that this was what he was told by the IRS employee who serviced Tips. The facts show otherwise. Consider the time frame here: The time of the 3/14/07 fax from Ms

Lee was **12:33pm.** Mr Inga **signed in and indicated the time downstairs in the IRS Mountainside lobby before going to get upstairs to the IRS office**. Remember Mr Inga in the morning of this same 3/14/07 day was in Springfield NJ up to about 11:45am before being erroneously referred to the Mountainside NJ IRS office.

Mr Scwharmann called Mr Inga and acknowledged that Mr Inga signed in using his name and this was approximately 12:00pm. AT&T and Mr Schwarmann can gladly go pull the security sign in log in Mountainside to verify this.

Mr Inga was in Mountainside IRS office representing Tips for around ½ hour. As petitioners' and Tips June 29th 2007 filing indicates Ms. Lee was met setting up IRS forms on the wall and immediately helped Mr Inga with no reservations after reading the overview of the case ID presented to her. Ms Lee never refused to service Tips nor did she need to be persuaded in any way as the IRS TIGTA investigation team discovered.

What AT&T did was take a comment that Tips made in its 6/29/07 filing regarding Tips asking MS Lee if she was going to put the IRS letter head on the proposed letter and Ms Lee stated "that's the way we do it". Tips raised no issue with Ms Lee when she informed Tips the first and only time that this is the way we do it". So what AT&T did in its 7/19/07 filing was to fabricate a story that Tips went in and out all day and was refused multiple times by Ms Lee.

AT&T's obvious intention with its misrepresentation is to manufacture deception by asserting Mr Inga was in the office multiple times in a single day and received multiple refusals. What also does not add up is the fact that AT&T auditor Mr Schwarmann was not according to the Treasury investigation branch (TIGTA) to have anything to do with the investigation once he elevated his own investigation to IRS TIGTA. Mr Schwarmann did not know Ms Lee as of the 3/23/07 letter and he had already turned the case over to TIGTA before April so it appears that Mr Schwarmann violated IRS policy of continuing his investigation despite TIGTA already being involved.

Mr Schwarmann's recount of what Ms Lee allegedly told him additionally defies credibility in that if Mr Inga left the 2nd floor IRS office of Ms Lee and went outside, Mr Inga would have had to again sign in for each of these alleged visits to the IRS office. AT&T wants the FCC to believe

if AT&T's story were a reality that------ in this security conscious era---that Mr Inga was allowed to enter in and out several times without signing in again and all this was done within a half hour visit to the IRS office! A complete farce.

If Mr Schwarmann spoke to Ms Lee and told Ms Lee that she was not authorized to send the IRS the letter---- that she believed when servicing Tips that she was authorized to do so------, Ms Lee possibly fabricated a cover-up to cover herself. Maybe Ms Lee instead of admitting that--- at that time--she believed what she was doing was within her job description---she decided to tell Mr Schwarmann that Mr Inga came back and forth all day long ---she refused Mr Inga multiple times----until she did the letter. Or maybe Mr Schwarmann simply made up the lie.

Mr Schwarmann states that he interviewed Ms Lee. Mr Schwarmann's March 23rd 2007 letter does not even acknowledge who the IRS employee even was. Why? Remember AT&T gave Mr Schwarmann the faxed IRS letter by Ms Lee. The faxed letter did not contain Ms Lee's name or IRS badge number that got added by Ms Lee until after the fax was sent. The IRS TIGTA office has also confirmed that Mr Schwarmann is assigned to IRS Mountainside NJ but much of his time is auditing AT&T at AT&T's offices.

Mr Schwarmann didn't even knew as of his March 23rd 2007 letter that it was Ms Lee who approved the letter to the FCC. Mr Schwarmann's July 10th 2007 letter recounts what he did in March but his March letter proves he did not even know who faxed the IRS letter---and even if he did know it was Ms Lee on 3/23/07 that still doesn't excuse Ms Lee or Mr Schwarmann for the lie of going in and out –being refused multiple times.

Interesting that this bogus tale of Tips going back to the IRS over and over and getting refused until the letter was done is now being introduced. If Mr Schwarmann and AT&T allegedly knew this as of AT&T's 6/18 07 FCC filing why did AT&T leave out this critical information?

Possibly Mr Schwarmann created the story after he was advised by AT&T of Tips 6/29/07 FCC filing and looked to counter it without possibly getting caught in perjury. This story is complete farce. Either Ms Lee lied to Mr Schwarmann or Mr Schwarmann simply lied. AT&T's revisionist history just does not make any sense based upon the fact that Tips was in and out within ½ hour. The bottom line is that Ms Lee immediately assisted Tips and Tips was in and out

in about ½ hour. At the time both Ms Lee and Tips believed that her Mountainside NJ office was capable of assisting Tips. AT&T and Mr Schwarmann's rendition is false and impossible according to the time line.

AT&T page 2:

> Despite that refusal, and despite having been told by the IRS that it "**can not *"directly"* reach out and contact the FCC concerning Tips case due to its laws**," Opp. at 64 (emphasis deleted), Mr. Inga repeatedly told the Commission that a document he wrote was a referral from the IRS and reflected the IRS's views. *See, e.g.*, March 16th Ex Parte at 2 ("the IRS want[s] these shortfall issues decided"); *id.* at 3 ("the IRS has definitively requested that all shortfall issues be resolved"). It is now indisputably clear that, when he made these statements in March, Mr. Inga knew they were false.

AT&T references the above highlighted statement as false which Tips made in its 6/29/07 filing on page 64:

> Tips was advised by the IRS and Florida that both taxing agencies can not ***directly*** reach out and contact the FCC concerning Tips case due to its laws. With respect to the IRS see Section 6103 of the Internal Revenue Code which covers disclosure and privacy laws—see exhibit G).

The statement is not false. The IRS Investigation/Reward Department could not **directly** reach out to the FCC due to IRS Section 6103 but instead the IRS could ***indirectly*** benefit by the IRS recommending that Tips utilize the IRS Taxpayer Advocate Service to resolve the impasse which would benefit the IRS (85% share) and Tips (15% share).

Absolutely the April 3rd 2007 IRS Taxpayer Advocate letter to the FCC is from the IRS and the letter asks the FCC to resolve the shortfall issues. The Taxpayer Advocate Service which is an IRS Office was able to issue the letter to the FCC but the IRS Investigation/Rewards department could not due to IRS section 6103.

AT&T Initiated the Investigation

AT&T Page 3

> AT&T initiated no IRS investigation and made no allegations to the IRS about whether Mr. Inga knew or paid anyone at the IRS; AT&T simply provided the

March 14th letter and Mr. Inga's March 16th Ex Parte Comments to Mr. Schwarmann.

AT&T concedes that it initiated the IRS investigation by going to its IRS agent Mr Schwarmann with the 3/14/07 IRS letter and the March 16th 2007 filing. All of AT&T's certifications indicate that IRS tax auditor Mr Schwarmann was contacted because he worked out of Mountainside. Mr Schwarmann is assigned to Mountainside but works most of the time at AT&T's offices.

AT&T's recount that it "provided" the information to Schwarmann does not mean that this did not initiate the IRS investigation. The IRS investigation was indeed initiated due to AT&T's reaching out to the IRS employee Mr Schwarmann. AT&T was providing the information to Schwarmann for what---bed time reading? General amusement? AT&T states it was asking for a "review"!

This so called "review" obviously included that Mr Schwarmann would contact Ms Schwarmann and Mr Inga and state that he was investigating the 3/14/07 IRS letter. AT&T then wants the FCC to believe that Mr Schwarmann then decided on his own to escalate AT&T's initiation of the investigation and write his 3/23/07 letter. No one is buying it. AT&T's "word smith-ing" of Mr Schwarmann's actions as AT&T only requesting a "review" appears to be a pathetic attempt to cover-up AT&T's actions.

Mr Schwarmann then decided to write a formal letter on March 23rd 2007 for AT&T on his own? Or did AT&T ask him to write a letter that AT&T could use? Why did Mr Schwarmann not explain in his March 23rd 2007 letter that he was AT&T's tax auditor working on AT&T's income tax review ----as stated within AT&T's certifications?

Schwarmann's 3/23/07 letter was obviously written to give the impression that he was an IRS internal affairs investigator (TIGTA Officer) or Ms Lee's boss who was commenting on his employee's actions. Even Mr Schwarmann's July 10th 2007 letter is misleading. Mr Schwarmann states:

"I contacted my manager in my Mountainside office to speak to the Taxpayer Service employee who faxed the 3/14/07 letter."

This statement could easily give someone the impression that Mr Schwarmann was the

Department head and he has asking his manager to find out who sent the fax. Mr Schwarmann is an AT&T auditor not TIGTA.
Is AT&T serious? Bottom line is that AT&T initiated the investigation by going to IRS agent Schwarmann who spends a great deal of time at AT&T. Whether or not AT&T directly instructed Mr Schwarmann to further escalate the **AT&T initiated investigation** with the IRS internal affairs TIGTA department, is not relevant given the fact that AT&T contacted IRS employee Schwarmann to investigate the letter instead of coming to Tips or the FCC.

Regarding AT&T's assertion that it did not allege to the IRS what AT&T alleged to the FCC---- that Mr Inga probably knew someone at the IRS---- this also appears to be another AT&T misrepresentation. The questions that were asked by the IRS TIGTA investigators included questions that the IRS investigators were verifying that there was no compensation or favoritism involved between Mr Inga and the IRS employees. Whether AT&T made such favoritism allegations only to the FCC against Tips is moot given the fact that it does not support AT&T's bogus attempt to assert that Tips was attempting to deceive the FCC. AT&T's favoritism allegations against Tips to the FCC only supports the fact that AT&T was attempting to deceive the FCC.

Notice how each of AT&T's certifications all are pretty much verbatim. It seems obvious that these AT&T employee certifications were all written for AT&T employees by AT&T's counsel. If they were indeed written by AT&T counsel then according to AT&T's theory they are all unauthorized fabrications because AT&T counsel obviously wrote the copy cat certifications for these AT&T employees.

AT&T would argue that they are not unauthorized or fabricated certifications because they were all then authorized by these AT&T employees after AT&T counsel wrote them. Likewise the fact that Tips provided a proposed letter to Ms Lee who then had the option of approving it, modifying it or rejecting is no different. They are not perfectly legitimate certifications **once someone takes responsibility to issue it as the IRS did in both the 3/14/07 letter and April 3rd 2007 IRS letter.**

How many times does a Judge allow counsel to write a Proposed Order which the Judge will then decide if it wishes to modify and sign? Happens in most cases. AT&T will recall that it

wrote the proposed order for Judge Bassler when Judge Bassler named Mr Umholtz petitioners contact. AT&T then modified the order again for Judge Wigenton. AT&T also wrote the order for Judge Hedges when the AT&T –CCI settlement agreement was provided to petitioner's.

Are these AT&T fabricated Orders? No! Once these Judges issued the orders the orders became that of the Judge not AT&T. Once the IRS issued the referrals they became the IRS referrals not want was **proposed** to the IRS by Tips.

Mr Schwarmann's statement was that the 3/14/07 letter was fabricated? What does that actually mean? It certainly does not mean that Tips requested Ms Lee to issue the letter while believing that what she was doing was not typical of her office duties. Tips believed at all times that Ms Lee was indeed authorized to issue that letter. When the office manager Ms. Russell verified on or about April 12th that the 3/14/07 letter was not typically done by her office, and the Taxpayer Advocate was more inclined to do what Tips requested-----Tips then immediately notified the FCC to not rely upon the 3/14/07 IRS letter.

AT&T July 18th 2007 page 3:

> Mr. Inga also claims that he was advised on June 1l th that the Treasury Department had resolved its investigation "favorably" to him. Given Mr. Inga's many other falsehoods about the IRS letter, the Commission should not accept this **unsworn** and unsubstantiated hearsay at face value.

As this is a certification Mr Inga will gladly go on record and swear that the IRS notified Mr Inga on the morning of June 11th that will not be seeking any prosecution against Tips president Mr Inga. The IRS TIGTA office found that Mr Inga in no way attempted to obtain the letters by compensation to IRS employees as AT&T asserted to the FCC.

AT&T page 3-4

- He has *confirmed* that he, not the IRS, wrote the March 14th letter, *id.* at 12, and that it was not authorized by the IRS, *id.* at 101 (he "was notified by Ms. Russell that her office does not do these types of letters"); *id.* at 64 (IRS advised him that it "**can not directly reach out and contact the FCC concerning Tips case due to its laws**").

Tips confirmed that it wrote the proposed letter that the IRS would modify and send to the FCC and Ms Lee adopted such letter as the IRS. Ms. Russell notified Tips on or about 4/12/07 and Tips voluntarily without AT&T's request advised the FCC not to consider the 3/14/07 letter. The IRS can not **directly** reach out but the IRS Investigations/Reward Department certainly was able to indirectly reach out to the IRS by recommending Tips contact the Taxpayer Advocate Service to resolve the IRS impasse.

AT&T page 3-4

- He submitted this fabrication in order to influence the Commission and falsely represented that this letter was an official statement by a federal agency.

Tips requested the IRS issue the letters which is indeed are statements by a federal agency—the IRS.

AT&T page 3-4

> He withdrew the March 14th letter only after reviewing Mr. Schwarmann's statement that it was a fabrication. Opp. at 96-99. Even then, Mr. Inga did not admit that he wrote the March 14th letter, but continued to describe it as an IRS-authored document. See Exh. 3 to AT&T's Mot. for Sanctions (referring to March 14th letter as a "primary jurisdiction referral" and the TAC letter as a "second IRS primary jurisdiction referral") (emphasis added).

Tips began investigation of whether it should rely upon the 3/14/07 letter as of April 2nd when seeing the March 23rd 2007 Schwarmann letter for the first time. Tips then voluntarily withdrew the 3/14/07 letter after the office manager Ms Russell verified for Tips that her office does not typically do these letters. Tips only referred to the 3/14/07 letter as an IRS referral up until it was verified by office manager Ms Russell that the 3/14/07 letter was typically not done by her office. AT&T's facts are completely out of whack as the records evidence indicates and common sense indicates. The bottom line is that at no time did Tips attempt to deceive the FCC, or the IRS.

AT&T page 4:

> Finally, in a breathtaking display of chutzpah, **Mr. Inga argues that AT&T should be sanctioned for having brought the fabricated letter to the Commission's attention.** He claims that AT&T "trumped up the entire IRS picture," Opp. at 27, based on speculation and unfounded assumptions concerning a letter that had already been withdrawn, *id.* at 75-79, and at a time when AT&T

> supposedly knew or should have known that the IRS had resolved its investigation favorably to Mr. Inga, *id.* at 78, 99, 104. These astounding claims are themselves sanctionable:

Just the opposite! Tips has no problem with AT&T bringing the letters to the FCC's attention. Tips position is that AT&T should be sanctioned for bringing its alleged misconduct regarding the IRS letters to the IRS for investigation without first contacting Tips and the FCC---**not** the above AT&T assertion that sanctions should be in order for bringing AT&T's alleged misconduct regarding the letters to the FCC's attention. AT&T initiated an IRS investigation without the FCC even asking for an investigation.

Yes indeed AT&T has trumped up the 3/14/07 letter to no end in a desperate attempt not to have the case resolved. Why? Because AT&T counsel knows it is guilty as all sin as petitioners have thoroughly destroyed all of AT&T's comical and bogus defenses.

AT&T page 4

- AT&T did not "trump" up charges of misconduct, but simply provided what **appeared to be a forgery** to an IRS official

How can AT&T possibly claim that the 3/14/07 letter that was faxed by the IRS was a **forgery** when the IRS stamped it with an IRS stamp and sent the document from its IRS fax machine which indicates that the document came from the IRS! **Even Mr Schwarmann never said it was a forgery**. Mr Schwarmann confirmed the document came from an IRS employee. Why didn't AT&T simply contact Tips or its counsel? Tips would have been more than willing to explain how Tips got to the IRS Mountainside office and why the IRS investigations/Rewards Dept recommended the Taxpayer Advocate Service to resolve the impasse.

AT&T page 4:

- Mr. Schwarmann was **fully aware of Ms. Lee's role** in faxing the March 14th letter, yet he still believed that the initiation of a potentially criminal investigation by the Treasury Inspector General for Tax Administration was warranted. Exh. 22 attached hereto.

First of all Mr Schwarmann did not even know which IRS employee sent the fax as Mr. Schwarmann never saw the final product of Ms Lee which added her personal name stamp and her badge number. Mr. Schwarmann's 3/23/07 letter just states it was an IRS employee because he did not know who it was. So how did he know Ms Lee's role when he didn't even know it

was Ms Lee who issued the 3/14/07 letter?

Furthermore how can Mr Schwarmann refuse to return 4 or 5 phone calls to Tips president who left messages pleading for Mr Schwarmann to call Mr Inga to explain in detail the entire set of circumstances which the IRS TIGTA Department later gladly accepted?

Since when does an IRS auditor decide to elevate his investigation for criminal prosecution without having even asked to review Tips side of the story? Mr Schwarmann **who does not refute being called numerous times by Tips president Mr Inga** and also a call with CCI's president Mr Shipp, seems to have been hell-bent on a mission to help AT&T and was obviously willing to ignore any evidence that Tips was desperately attempting to provide Mr Schwarmann.

How in the world can AT&T excuse Mr Schwarmann's actions ---asserting Mr. Schwarmann believed he was warranted in taking such actions---- when he refused to obtain any evidence from Tips and additionally never checked the security sign in log to see the time span between when Tips was there until when the fax was sent to authenticate Ms Lee's alleged comments.

AT&T page 4.

> Mr. Inga's claim that AT&T should be punished for seeking sanctions based on conduct that led to an official investigation into a ***potential*** crime is the epitome of a frivolous filing.

There was no evidence of a crime to begin with. Secondly if a payoff or favoritism was involved to obtain the IRS letters it would be a "criminal" **act involving Tips and the IRS not Tips and the FCC.** AT&T again admits it was a ***potential*** crime. AT&T simply acted on "***potential***" and ***presumptions*** of knowing people. Filing for sanctions on admitted ***potential*** allegations is indeed frivolous[1].

AT&T has now admitted that at the time of its 6/12/07 filing it did not know the outcome of the IRS investigation. AT&T now states that the IRS policy was not to notify AT&T of the outcome of the IRS investigation ---but the IRS told this to AT&T ***after*** AT&T had already initiated the

[1]*In re Litigation Trust Recovery*, 17 FCC Rcd 21852, 21857-58 (2002). Sanctions are appropriate for the filing of frivolous pleadings, as AT&T has filed, which include those made when "**there is no 'good ground to support it,**'" those "**filed without any effort to ascertain or review the underlying facts.'"**

investigation. Therefore as of the 6/12/07 filing date AT&T filed the comments obviously believing that it would get the results of the IRS investigation that it initiated with Mr Schwarmann. Thus AT&T's filing was indeed based upon pure speculation and presumptions and was indeed frivolous.

AT&T page 5:

> Mr. Inga's Misconduct Concerning The March 14th Letter Merits Sanctions. Throughout his opposition, Mr. Inga attempts to portray himself as a hapless victim of **bumbling bureaucrats** who **repeatedly** gave him bad advice, and of a baseless vendetta by AT&T.

There was no accusation that any IRS agent was a bumbling bureaucrat. There was no accusations that Tips was **repeatedly** provided bad advice. AT&T's rhetoric simply embellishes for affect.

Mr Inga representing Tips simply went to the IRS Springfield office after being recommended to contact the IRS Taxpayer Advocate Service by the IRS Investigations/Reward Department to resolve the impasse. Tips was erroneously directed by a Springfield NJ IRS employee to Mountainside NJ office on 3/14/07.

Ms Lee was given a detailed overview of the impasse situation with the IRS Investigation/Reward Department including all contact numbers and case ID's for both the rewards claim and the Taxpayer Advocate claim. Ms Lee and Mr Inga simply believed Ms Lee was authorized to do the IRS 3/14/07 letter. When Mountainside office manager Ms Russell confirmed that Ms Lee duties did not typically allow for this type of letter and the Taxpayer Advocate Service was more apt to provide such a letter, Tips immediately advised the FCC that Tips will not rely on the letter.

AT&T is making this 3/14/07 letter into a major issue when it was not. There was no attempt to deceive the IRS or the FCC. There was no attempt to obtain a referral to the FCC that Tips knew was not typically done by the Ms Lee's office. Tips only later found out from the Mountainside NJ office manager---Ms Russell--- that this type of letter was not typically a function of Mountainside Assistance office.

The IRS website shows that the only office that is set up to resolve these types of impasses is the

Taxpayer Advocate Service in Springfield NJ. That's initially where Mr Inga went on the morning of 3/14/07 as instructed by the National Taxpayer Advocate Service hotline. The hotline number was recommended and provided by the IRS Investigations/Rewards Department to get the impasse resolved and the file was notated by the IRS Investigations/Rewards Department as to this recommendation.

This is not a case where there was a rejection to do the FCC letter by the Taxpayer Advocate Service in Springfield and Mr Inga attempted to go elsewhere. Mr Inga never spoke to the Taxpayer Advocate contact in Springfield that was set up in the IRS system by the Taxpayer Advocate National Hotline--- until April 3rd 2007 the day after seeing the Schwarmann letter.

Tips was not out shopping IRS offices to get a letter done. If this were the case Tips could have gone to several IRS Assistance Centers that were much closer to home than going 40 minutes to Mountainside NJ. There is an IRS Assistance Center in Fairfield NJ just 3 minutes from Tips office. If Tips was shopping IRS offices as AT&T asserts there was no reason to go so far to do such a thing. The reason why Tips got to Mountainside Assistance Center is because the only Taxpayer Advocate Service office that the Hotline said was available was in Springfield NJ 40 minutes away.

The reason why the IRS employee in Springfield directed Tips to Mountainside was because Mountainside was the closest Taxpayer Assistance office to Springfield. Mr Inga's actions on this 3/14/07 day are totally consistent with Mr Inga's recount of Tips involvement with the IRS.

AT&T's story is a fairly tale. Amazingly AT&T's version of the story has Tips waking up on 3/14/07 and deciding to pick Mountainside NJ out of the blue—over 40 minute ride away—in attempt to get a referral letter done because Tips believed Mountainside NJ would be more apt to do the IRS letter than the probably 15 IRS offices that are closer to Tips.

AT&T's penchant for making up stories –as the Commission has repeatedly witnessed--- is remarkable, but this one is the most bizarre. If Mr Inga was actually rejected by one office (Mountainside) multiple times as AT&T and Mr Schwarmann bogusly assert ---there would be no need to keep asking Mountainside to do the letter when there were so many other offices that Mr Inga could go to if that was actually Mr Inga's intention. AT&T's attempt to create "the intention of deception" by Mr Inga is contrary to the facts and common sense but that never stopped the AT&T con artists. Don't let the facts and evidence stand in the way of a good fairy

tale now AT&T.

AT&T page 5

> Mr. Inga has now **admitted, for the first time, that he, not the IRS, authored the March 14th letter and that the letter was not sent on behalf of the IRS,** despite Mr. Inga's assertions that the letter constituted an IRS referral. *See* AT&T's Mot. for Sanctions at 14-15. As Mr. Inga explains, he wrote the March 14th letter before entering the IRS's Mountainside, N.J., office. Opp. at 12. **Mr. Inga also confirms the equally obvious fact that the March 14th letter was not authorized**.

More AT&T nonsense! Mr Inga stated that he wrote the letter that he **PROPOSED** that the IRS could modify and send the FCC. Obviously the IRS did not understand the tariff questions that he FCC would need to resolve the shortfall impasse and thus a proposed letter had to be done for the IRS. This does not mean that the IRS did not accept that proposed letter as emanating from it.

At the time the IRS agent Ms Lee sent the 3/14/07 letter both Mr Inga and IRS agent Ms Lee believed the IRS Mountainside office was indeed authorized to send the letter. It was not until Ms Russell on or about April 12th 2007 asserted to Mr Inga that the Mountainside office did not typically do such letters that Mr Inga then informed the FCC immediately not to rely upon the 3/14/07 letter. What AT&T has done in its brief is to give the illusion that Mr Inga had knowledge that 3/14/07 letter should not have been done as of that 3/14/07 date. This is typical AT&T misrepresentation.

Why did AT&T wait until June 12th 2007 to show this 3/23/07 Schwarmann letter to the FCC when the letter had already been withdrawn by Tips in April? This has become AT&T's defense why it did not transfer the traffic in 1995!

AT&T page 5:

> Despite his many statements about being mis-directed to **various** IRS offices

There were not **various** IRS offices that Mr Inga was referred to. Mr Inga simply got referred to one office—the Mountainside NJ office by an IRS employee in Springfield NJ. AT&T states it was ***various*** offices to again **embellish**. This is typical misrepresentation made by AT&T in an attempt to trump up a non issue.

AT&T page 5:

> Thus, as Mr. Schwarmann of the IRS stated in his March 23rd letter to AT&T, the March 14th letter Mr. Inga submitted was not "prepared or authorized" by the IRS. Exh. 2 to AT&T's Mot. for Sanctions

The 3/14/07 letter was indeed prepared by the IRS and authorized by IRS agent Ms Lee. The fact that Ms Lee and Mr Inga were told weeks later that Ms Lee's office does not typically do these type of referrals, does not mean that as of 3/14/07 either Ms Lee or Mr. Inga were deliberately attempting to engage in any misconduct or deceive anyone.

AT&T page 6:

> Instead, what Mr. Inga tries to suggest in his opposition is that he reasonably believed the letter was effectively authorized by the IRS. To create this impression, he claims that, after he was incorrectly referred to the Mountainside office, **he entered that office once and met Ms. Lee, who sent the March 14th letter on her own after "several minutes," while Mr. Inga stood by patiently.**

Mr Inga entered the IRS office only once as the time span between the lobby sign in and the faxing of the document indicates. Ms Lee reviewed all documentation and decided she was authorized to send the referral to the FCC.

AT&T page 6:

> Renouncing his former claims of tax expertise as an Enrolled Agent of the IRS, Mr. Inga dons the mantle of innocent taxpayer and claims that he, too, was puzzled by Ms. Lee's failure to put the letter on IRS letterhead, but says he was told "'that's the way we do it,'" and was in no position "to tell her how she should do her job." Opp. at 13.

Tips president Mr Inga did not renounce his expertise on tax law matters. Mr Inga still believes that taxes are due and owing the IRS if the FCC determines that the shortfall charges were permissible. What Tips previously pointed out was that being a former Enrolled Agent does not mean that Mr Inga was trained in what the normal IRS procedures were for handling IRS Investigation/Rewards Dept impasses and primary jurisdiction referrals to the FCC.

The reason for the declaration that Mr Inga was a former Enrolled Agent was to verify for the FCC that the claims against AT&T **were being made by a company whose president had a strong tax law background—not a strong IRS procedural background**. Despite this being fully explained in the 6/29/07 filing by Tips, AT&T again to make weight and misrepresent what Tips clearly explained files it again.

AT&T page 6:

> **Ms. Lee did not suggest that an unsigned letter that was not on IRS letterhead was somehow just as official or authorized**, because "'that's the way we do it,'" nor did Mr. Inga idly sit by unable "to tell her how she should do her job." Opp. at 13. Rather, Mr. Inga importuned Ms. Lee to type the letter on IRS letterhead, and she refused. Exh. 22 attached hereto.

How does AT&T know what Ms Lee said when AT&T was not even there and the Schwarmann certification who supposedly spoke to her does not confirm any of AT&T's bogus accusations of what Ms Lee said to Tips? AT&T just keeps making up what Ms Lee said and what she didn't say without any certification from Ms Lee.

Ms Lee clearly stated to Mr Inga that what she was doing was authorized without being on IRS letterhead. Ms Lee explained to Mr Inga that "this was the way we do it" and Mr Inga immediately accepted Ms Lee's response.

AT&T page 6

> Mr. Inga then repeatedly told the Commission that the March 14th letter was an official expression of interest by the IRS. *See, e.g.*, March 16th Ex Parte at 2 ("the IRS want[s] these shortfall issues decided"); *id.* at 3 ("the IRS has definitively requested that all shortfall issues be resolved"). **Thus, when he made these statements in *"March"***, Mr. Inga necessarily knew they were false.

When the statements were made in March, Tips **had yet to see Mr Schwarmann's letter** which **AT&T first introduced to Tips on April 2nd 2007** as an exhibit within its brief to NJ District Court Judge Wigenton. By early in the day on April 3rd 2007 Mr Inga already had the

replacement Taxpayer Advocate letter of Mr Gardiner. It was not until on or just prior to April 12th 2007 that Ms Russell's office then stated **upon Mr Inga's inquiry** that the 3/14/07 letter that Ms Lee issued was typically not done by her office. Thus AT&T's **March** date is again factually wrong based upon its own admission of introducing the Schwarmann letter in April.

AT&T's facts are obviously wrong, but when did that ever stop AT&T from making egregious misrepresentations?

AT&T page 7:

> Mr. Inga asked the Commission to rely solely on the April 3rd TAC letter **only *after* AT&T alerted him to the falsity of the March 14th letter.** *See* AT&T's Mot. for Sanctions at 16. Indeed, he explains that he only sought the TAC letter in response to AT&T's assertion that the March 14th letter was fabricated.

Exactly! At the time of the 3/14/07 Ms Lee letter, Tips only believed that the 3/14/07 Ms Lee letter was indeed within Ms Lee's duties to perform –as Ms Lee thought so also. Yes Tips took it upon itself to tell the FCC not to rely upon the letter. AT&T did file a motion with the FCC demanding that Tips withdraw the 3/14/07 letter or that a motion that the FCC not consider the 3/14/07 letter. AT&T filed nothing with the FCC until 6/12/07. Tips acted quite honorably and in extraordinary good faith and took it up itself to tell the FCC not to rely upon the 3/14/07 IRS letter from Ms Lee. Tips handled the situation with utmost respect for fairness. All parties before the FCC should adhere to such lofty ethical standards. Tips should be applauded for the immediate action that he took to rectify the situation.

AT&T page 7:

> Yet, despite this information, he asked the Commission on April 3rd to rely on the March 14th letter as a referral. FOOTNOTED

> Footnote Says:
>
> In yet another attempt to mislead, Mr. Inga suggests that the "IRS Referral" in **his April 3rd submission was the TAC letter**, not the March 14th fabrication. Opp. at 97. But the TAC letter was not even received until **April 4th.** *See* Exh. 4 to AT&T's Mot. for Sanctions (Commission stamp indicating it was received on **April 4th.**

Despite the fact that Tips has already clearly explained this in its 6/29 comments and provided

exhibited documentation AT&T again simply misrepresents that Tips was relying upon the 3/14/07 letter later in the afternoon on April 3rd 2007 to the FCC.

Tips was relying upon the April 3rd 2007 faxed letter to the FCC which the IRS got around to faxing at 2:30pm on April 3rd not April 4th as AT&T asserts. **See the fax scroll on the IRS letter---It was sent April 3rd 2007 by the IRS not April 4th 2007. AT&T again is wrong, but the clear evidence does not stop AT&T from its repeated misrepresentations.**

Additionally Tips also pointed out that the second April 3rd 2007 IRS letter had already been committed to Tips by Mr Gardiner a while before he or his secretary got around to faxing it directly to the FCC. The fact that the FCC did not get around to stamping the April 3rd 2007 letter it received on April 3rd 2007 until the next day on April 4th 2007 is not relevant. The FCC did not even get a chance to put the April 3rd 2007 letter up on the FCC server until after April 12th 2007 as the Tips email confirmed that the April 3rd 2007 letter was still not yet placed upon the FCC server. Within a couple hours after Tips' April 12th 2007 email the FCC placed the April 3rd 2007 IRS Keith Gardiner letter on its server.

> ----- Original Message -----
> **From:** Mr. Inga
> **To:** Brown, Richard ; Guerra, Joseph R. ; Frank Arleo ; phillo@giantpackage.com ; LGSJr@usa.net ; Joe Kearney ; Deena Shetler ; fcc@bcpiweb.com
> **Sent:** Thursday, April 12, 2007 2:46 PM
> **Subject:** Case 06-210 : Regarding IRS Referrals on All Shortfall Claims
>
> Deena
>
> We ask the FCC not to rely upon the March 14th 2007 primary jurisdiction referral on shortfall claims and instead only rely upon the one the IRS recently sent directly to the FCC to resolve all shortfall claims in case
> 06-210.
>
> **We are sure that eventually the FCC will post this second IRS primary jurisdiction referral on the FCC Server.**
>
> Thank you,
>
> Al Inga Pres.
> Tips Marketing Services, Corp.

The bottom line is that the representations to the FCC were based upon having already received the IRS go ahead on the April 3rd 2007 IRS Keith Gardiner letter **early on April 3rd 2007**. The fax scroll on the fax sent from the IRS investigations /Rewards Department directly to the

Taxpayer Advocate Service to confirm active status of the case against AT&T was at **10:19 am on April 3rd 2007**. See exhibit G in petitioners 6/29/07 FCC filing.

The second IRS letter had been committed to early on April 3rd not April 4th. AT&T can't even read the fax scroll -------or more likely it again simply wishes to ignore the empirical evidence. AT&T does not let the facts or evidence get in the way of a good fairy tale.

Tips can only be expected to act upon what it has procured from the IRS. The fact that the FCC did not stamp the letter till a day later is irrelevant. No one knew that the IRS stamped the letter received as of April 4th 2007 when it actually received it April 3rd 2007 until the letter went upon the FCC server over a week later.

Additionally, Tips also pointed out that there was still a question outstanding regarding the 3/14/07 letter up until the conversation with Mountainside office manager Rosalyn Russell on or about April 12th 2007. Remember, Tips believed that the letter that Mr Schwarmann had initially investigated included Ms Lee's personal name stamp, initialization, badge number, and marked Sent OK. Mr Inga simply could not understand why Mr Schwarmann would have such a negative reaction to Ms Lee's letter because **Tips believed that Mr Schwarmann had all the full documentation that obviously shouldn't have justified Mr Schwarmann stating that the letter was fabricated. In fact Mr Schwarmann shouldn't have even stated the faxed 3/14/07 letter was fabricated let alone the 3/14/07 letter with the added documentation.**

However, even after Mr Schwarmann saw the final product with all the documentation released by Ms Lee within petitioner's and Tips 6/29/07 filing Mr Schwarmann couldn't any longer refute that the letter was not fabricated so Mr Schwarmann never addressed the final Ms Lee document in hid July 10th 2007 certification—it appears that he simply made believe he had no knowledge of the final document (6/29/07 filing at exhibit F) and thus never addressed it. Of course Tips wouldn't put it past AT&T to have kept Mr Schwarmann totally in the dark regarding the final document provided by Ms Lee.

AT&T could have simply been using Mr Schwarmann?

While Mr Schwarmann may still be able to argue that Ms Lee shouldn't have done the letter after the fact, Mr Schwarmann absolutely can not assert that Ms Lee was either pressured into doing the letter or that the 3/14/07 letter was in any way fabricated or forged by Tips. At the time of the

3/14/07 letter Ms Lee believed it was well within her job description to perform the IRS to FCC referral as did Tips.

Who is Mr Schwarmann to keep investigating anyway? Tips has been advised by the IRS that once the IRS TIGTA staff had begun the investigation Mr Schwarmann was suppose to stop his investigation. However Mr Schwarmann who is only an IRS auditor of AT&T seems to have decided that he is going to go over TIGTA's head and keep trying to investigate for AT&T despite the fact that there is nothing there. Much to do about nothing!!! But the AT&T con artists have trumped this up to no end.

Mr Schwarmann stated he worked "out of" the IRS Mountainside office, but IRS TIGTA said he is "assigned" to Mountainside. Mr Schwarmann spends a great deal of time at AT&T's place of business auditing AT&T. Mr Schwarmann for some reason just preferred to tell Tips that he works out of Mountainside. An office manager in Mountainside (Alise) didn't even know who Mr Schwarmann he was!

It may be that Mr Schwarmann as AT&T's auditor is simply frustrated at Tips because Mr Schwarmann did not catch AT&T's possible massive tax evasion. This maybe Mr Schwarmann's reason why he continued to write a certification in July which Mr Schwarman may or may not know contains inaccurate statements despite knowing that he was not suppose to investigate and make statements after TIGTA took over the investigation that he escalated to TIGTA.

The Second IRS Letter--The Taxpayer Advocate Service Referral of April 3rd 2007

AT&T page 8:

> But, regardless of who wrote it, the TAC letter is nothing more than a submission by Mr. Inga's case advocate, who is representing Mr. Inga's interests *before the IRS. See* AT&T's Mot. for Sanctions at 17. It is not a letter from someone who can or who purports to speak *on behalf of the IRS* to the Commission, even if the Taxpayer Advocate Office is a department of the IRS or has an IRS "logo." Opp. at 27.

AT&T got it correct in its 6/12/07 filing page 17 regarding the April 3rd 2007 IRS letter: The Taxpayer Advocate Service:

"**independently represents *[taxpayer] interests and concerns***

> ***"within the IRS."*** *See* *www*.irs.gov/advocate/article/0,,id=97392,00.html (last visited June 12, 2007) (emphasis added).

Yes it operates "within the IRS"—not outside the IRS. AT&T falsely argues that because the IRS issued a letter on behalf of Tips due to Tips standing, the letter did not speak for the IRS. All referrals to the FCC are on behalf of the plaintiff/petitioners whether they come from the Court or another authorized party.

The IRS issued a referral to the FCC on behalf of Tips claims **in the same manner in which the District Court issued a referral to the FCC on behalf of petitioner's claims**. In each instance if the claims were not justified the issuing parties would not have issued the referrals.

Furthermore in the IRS case the IRS issued the letter and the IRS would receive 85% of the taxes collected from AT&T on the shortfall charges, whereas Tips only would receive 15%. As opposed to when Judge Bassler issued the petitioner referral the Court had no financial interest as did the IRS. The IRS Taxpayer Advocate Service issued the April 3rd 2007 letter stating it has the authority to do so. The letter stated:

> "it was **indeed authorized** to resolve issues that are at an impasse as this one".

The IRS Taxpayer Advocate Service said it was authorized to do it. The IRS was issuing the referral on Tips behalf but also on its own behalf because it would receive a greater share.

AT&T continues its pathetic argument against the April 3rd 2007 IRS Taxpayer Advocate Service letter on page 8-9:

> Indeed, the TAC letter only confirms—as Mr. Inga's explanation essentially confirms— that Mr. Inga is pursuing his own "private tax-bounty request" and that he has tried to use Commission processes to do so, **not that there is in fact an investigation into whether AT&T owes taxes on shortfall charges made to aggregators or that the IRS itself wants the Commission to resolve any "shortfall" issues.** AT&T's Mot. for Sanctions at 17

AT&T definitely espouses to the adage of "don't let the facts get in the way of a good story". AT&T's comments are completely opposite the evidence provided. AT&T states

> **not that there is in fact an investigation into whether AT&T owes taxes on shortfall charges**

How much clearer does the April 3rd 2007 IRS referral have to be? The IRS referral explicitly stated all the permissibility of shortfall charges that the IRS wishes the FCC to resolve and stated there is an impasse regarding these shortfall charges. Additionally the IRS status letter (exhibit G in petitioners 6/29/07 filing) sent April 3rd 2007 by the IRS Investigations/reward Dept to the Taxpayer Advocate Department explicitly stated the investigation was active and explicitly mentions the shortfall charge issues.

As the FCC can see the IRS letter (exhibit G in Tips 6/29/07 comments) is addressed to Tips Marketing not Mr. Inga personally. Additionally, the very first line states:

Your claim is still open and under active investigation.

Therefore AT&T's claim that the Taxpayer Advocate never verified that there was an active investigation was false.

Additionally, as you can see the April 3rd 2007 IRS referral letter to the FCC states:

> **I have confirmed with the IRS Rewards/Investigation Department that the taxpayer has an active tax rewards case before the IRS.**

Here is the relevant part of the IRS taxpayer Advocate letter (exhibit 4 to AT&T's June 12th 2007 brief) states:

> I am the office manager for the IRS Taxpayer Advocate Center for the State of NJ. **I have confirmed with the IRS Rewards/Investigation Department that the taxpayer has an active tax rewards case before the IRS.**
> The IRS tax rewards/investigation department **recommended taxpayer contact TAC for the FCC referral to resolve an IRS impasse.** Under the IRS rewards program (IRS Form 211) the taxpayer has **standing** involving the outcome of the IRS's ability to collect taxes that may be owed by AT&T. The Taxpayer Advocate Center **is indeed authorized to resolve issues that are at an impasse at the IRS, as this one**.
>
> **Determining the telecom issues to determine the tax base will solve the IRS impasse**. Therefore, please resolve all declaratory ruling requests on shortfall issues made by petitioners vs. AT&T within case 06-210 currently before the FCC, involving both the permissibility and proper method of infliction of shortfall and termination phone service charges.

The IRS referral clearly covers the key points: 1) Active IRS investigation, 2) Resolving an IRS Impasse---Determining the telecom issue determines the tax base. 3) Tips has standing on the IRS's ability collect from AT&T. 4) Recommended by IRS Investigations Dept. 5) It was indeed authorized to send the FCC the primary jurisdiction referral letter.

The IRS referral could be no clearer despite AT&T's false claims. Despite the IRS letter having stated that the Taxpayer Advocate Service confirmed that the case was active AT&T asserts "the IRS never checked to see if the tax Rewards Issue was pending or whether there was an actual investigation at all". The IRS Taxpayer Advocate Service agent did indeed check and received the fax confirmation from the IRS when on the conference call very early on April 3rd 2007.

AT&T page 9:

> Mr. Inga's claims that he spoke with the rewards department and that they confirmed by phone and by letter that he has an active rewards claim "***does not mean*****" that AT&T is currently being investigated by the IRS for allegedly not paying taxes on shortfall charges**. *E.g.,* Opp. at 20-21.

Mr Inga did not state that he spoke alone to the IRS Investigation Rewards Department. Mr Inga explained that he participated in a conference call between the IRS Investigation/Rewards Department and the IRS Taxpayer Advocate Service. The IRS Taxpayer Advocate Service verified with Tips and the IRS Investigation/Rewards Department that there was an impasse due to whether or not the shortfall charges were permissible because AT&T may not have paid taxes on the shortfall charges and also that the investigation was active and was waiting upon the outcome of the shortfall issues impasse.

AT&T page 9:

> AT&T is unaware of any such investigation by the IRS or Florida Department of Revenue

Of course AT&T was not contacted by the IRS or Florida. That is the entire point of the impasse. The IRS and Florida would not pursue AT&T until it was determined by the FCC whether the shortfall charges were permissible. Obviously if the shortfall charges are deemed as should not having been applied---- then there would be no tax base to apply the IRS tax rates and AT&T will never be approached by the IRS. AT&T's statement is comical given the fact that the IRS status letter faxed to the Taxpayer Advocate Service by the Investigations/Rewards Dept on April 3rd 2007 and the April 3rd 2007 IRS Taxpayer Advocate Service referral letter

confirmed the IRS investigation of AT&T for taxes on shortfall charges. Still AT&T says it was unaware of any such investigation.

Additionally AT&T had argued to Tips that shortfall was not taxable in Florida but AT&T was provided the email from Florida senior counsel many months ago showing AT&T is aware it is being investigated by Florida.

AT&T has been provided the following: Here is an opinion from **one Florida senior counsel** which is the Florida Statute that confirms shortfall charges are taxable in Florida and CCI was a Florida Domiciled Company.

> "charges about which we have been speaking appear to constitute taxable services under the law prior to October 1, 2001 (essentially, sales tax upon telecommunication services under Chapters 203 and 212, Florida Statutes [F.S.]), and current law(tax upon "communications services" under Chapter 202, F.S.)"

The senior Florida counsel who made the above statements has confirmed AT&T has already been in touch with the Florida Dept of Revenue so AT&T's statement on page 9:

> AT&T is unaware of any such investigation by the IRS or Florida Department of Revenue

Is contrary to what Florida is stating. AT&T has also been advised that Florida senior counsel provided the following answer to AT&T's assertion that AT&T did not have to pay Florida because it was over 5 years:

Petitioners cited to the FCC on March 16th 2007 Page 2-3

> Re the statement regarding a 5 yr. statute of limitation on taxes collected before July 1, 1997, that is found in Section 95.091(3)(a)1.a, Florida Statutes. However, later subparagraphs of Section 95.091(3)(a), F.S., provide that the Department may determine and assess tax, penalty, and interest due: (i) subparagraph 4. - for taxes due before July 1, 1999, at any time after the taxpayer has filed a grossly false return; or (ii) subparagraph 5. - **at any time** for failure to pay, failure to file, or filed a **fraudulent** return.

Therefore AT&T's statement on page 9 of its 7/18/07 filing:

> AT&T is unaware of any such investigation by the IRS or Florida Department of Revenue

is simply a farce.

AT&T page 9:

> The IRS may or may not follow up on his tip. But these **letters do not prove, as Mr. Inga claims, that AT&T is being investigated for "massive tax fraud."**

The April 3rd 2007 letter did state that AT&T is being investigated for tax fraud as the IRS letter explicitly asked the FCC to determine "the telecom issues to determine the tax base will solve the IRS impasse".

The letter then explicitly requested the FCC to interpret A through G shortfall issues. Additionally, the IRS then stated:

> An expedited decision on all of the Declaratory Rulings Requested by petitioners, on the telecom issues, will **determine multiple tax issues to then determine tax ramifications.**

As far as AT&T's assertion that its tax fraud is not "massive" tax fraud--- this is a subjective question. Tips thinks most people would say that beating Uncle Sam out of taxes on possibly tens of millions of dollars of shortfall charges would be considered "**massive tax fraud.**"

AT&T page 9:

> In fact, the IRS cannot disclose to informants such as Mr. Inga whether any action has been taken on the information they submit.

While the IRS did not and can not give specific details of its AT&T investigation--- the facts that the IRS were able to publicly disclose was that the status of the investigation and at an impasse. The IRS 4/3/07 letter defined the investigation issue as being on shortfall "permissibility and proper method of infliction".

Because the Investigations/Reward Department confirmed on April 3rd 2007 to the Taxpayer Advocate Service that the investigation was active, a primary jurisdiction referral was issued on April 3rd 2007 to resolve the impasse of whether the shortfall charges were permissible as the IRS Taxpayer Advocate referral letter indicates.

The only thing the FCC needs to know is that there is a telecom controversy and there is uncertainty relating to the tariff and the IRS explicitly asked the FCC to answer the shortfall questions. The specific tax details are of no concern to the FCC. The FCC does not need to know anymore. The FCC has obviously provided more than sufficient information to rule on the IRS request despite AT&T asserting that the IRS can not provide such information.

AT&T page 9:

> *See* Internal Revenue Manual 25.2.1.4(l) (g), *available at* http://www.irs.gov/irm/part25/ch02s01.html ("the Service is prohibited from disclosing any information about **specific actions** taken by the Service" as a result of taxpayer tips).

AT&T may not understanding the IRS policy. The fact that the IRS states that it can not comment on any **specific actions** taken by the IRS---may not mean that the IRS can not disclose the case status and what the case involves i.e. (taxes on shortfall) to the IRS Taxpayer Advocate Service which was on the phone with Tips giving it permission to do so. The FCC does not need the tax law details. It just needs the explicit tariff language it needs to interpret.

AT&T Page 10:

> Without any credible evidence, Mr. Inga also makes much of the supposedly "favorable" outcome of the Treasury Department investigation. *E.g.*, Opp. at 77-78, 99. In light of his many other misrepresentations, this unsworn and unsubstantiated hearsay is entitled to no weight. **Indeed, AT&T tried to confirm its accuracy with Agent Koles, who investigated the matter on behalf of the Treasury Department, and was informed that the Treasury Department will not release such information**. Sinton Decl. ¶ 10 (attached hereto as Exh. 23).

The fact that IRS investigator (TIGTA) agent Richard Kowle legally can not divulge the outcome of the investigation of Tips to AT&T does not mean that the IRS could not divulge the favorable outcome to Tips, Mr Inga—as the party the IRS investigated. Only Mr Inga would know the investigation outcome not AT&T---- and therefore AT&T's speculation is just that speculation with no evidence as usual.

AT&T July 18th page 11:

> Moreover, Mr. Inga has clearly orchestrated and authored virtually all of his companies', including Tips', submissions to the Commission, calling himself at one time a "one man band who works at home." Req. for Combining Declaratory Rulings and Extension of Time to File Reply Comments (Jan. 3, 2007) at 3. Indeed, in that same submission, which was ostensibly submitted by petitioners, Mr. Inga requested an extension on behalf of the "**4 Inga telecom companies *and Tips."*** *Id.* at 4 (emphasis added). His countless references to the "Inga Companies" **or the "4 Inga telecom companies**" in many filings, **as well as his representations on behalf of Tips** in submissions ostensibly made by the others, belie any claim that they are legally distinct entities. Beyond question, these companies are mere alter egos, and there is no basis to respect corporate formalities when Mr. Inga uses them interchangeably to serve his own ends.

The fact that most of the public FCC comments for the 4 Inga petitioners or for Tips Marketing

Services, Corp were made by Mr Inga as president is not unusual. All submissions were signed by Mr Inga as president of these separate corporations. The fact that Mr Inga clearly indicated for the IRS when Tips was commenting versus when the 4 Inga telecom petitioners were commenting is further confirmation that each of these corporations were being treated as distinct corporate entities.

In fact it was AT&T which advised One Stop Financial Inc's president Mr Inga that Mr Inga should take out three additional corporations due to the fact that the tariff commitment level was not high enough to accommodate just one corporation (One Stop Financial Inc.) with all the revenue that the one company had. Therefore AT&T clearly understood they were all separate corporations.

The Tips Corporation gains financially if the shortfall charges are deemed permissible. Conversely, the four petitioner's companies gain if the shortfall charges are not permissible. Mr Inga never interchangeably mixed Tips position with the four Inga Telecom companies position as the AT&T con artists assert.

Furthermore whether each company is owned by a "one man band" is totally irrelevant in the eyes of the law. All these companies separately pay their own annual filing fees and separately file their own tax returns, etc. AT&T is well aware that the size of the corporation is irrelevant.

Next thing you know AT&T will be creating a new category of corporations called de minimis corporations whereby it will argue that the law doesn't pertain to de minimis corporations. AT&T of course made a similar size exception assertion when it asserted in its cover-up for Mr Carpenter that there was a size exception provision within section 2.1.8.[2] that no one can find.

AT&T 7/18/07 page 11:

> In sum, Mr. Inga confirms AT&T's central contentions concerning the March 14th letter: he submitted a letter he wrote and tried to pass it off to the Commission as an official IRS referral in order to have the Commission consider an issue he claims will personally

[2] In an effort to cover-up for its counsel Mr Carpenter's correct explanation to the DC Circuit that shortfall and termination obligations do not transfer on "traffic only" transfers, AT&T incredibly stated that what Mr Carpenter was referring to was "de minimis transfers" where only a one or two accounts transferred—as if there were such a provision in 2.1.8 Now AT&T comes up with another beauty---- asserting corporations owned by one individual do not have the same corporate status under the law!!! Talk about desperate!!! Judge Politan was correct in the 1996 March oral argument previously presented to the FCC --It is actually comical the way throws "it" against the wall to see what sticks.

benefit him.

In sum AT&T has provided zero evidence that the initial 3/14/07 IRS letter by the Ms Lee was believed by both Ms. Lee and Tips to be improper. Both the 3/14/07 and the 4/3/07 letters were *proposed* letters that were provided and the IRS personnel maintained full authority to modify the letters as each saw fit before becoming responsible for the letters as they then affixed their documentation to the proposed letters and authorized their release from the IRS.

The record evidence clearly shows that immediately upon the confirmation from the Mountainside office manager Rosalyn Russell---- that her office does not typically do such requests and the Taxpayer Advocate Service was more geared to handle such a request. **Ms Russell was very apologetic and agreed with Tips that there was no way that Tips would know what Ms Lee could or couldn't do as part of her job description.** Tips immediately and voluntarily notified the FCC that it should not rely upon the 3/14/07 IRS letter addressed to the FCC. While AT&T asserts that the 3/14/07 IRS letter was to personally benefit Mr Inga, the evidence clearly shows that all involvement with the IRS with both the 3/14/07 letter and the 4/3/07 letter were only involving Tips Marketing Services, Corp.

We have witnessed how AT&T initiated an investigation from its auditor Mr Schwarmann who then ignored returning all phone calls and would not accept any evidence from Tips. We then see how Mr Schwarmann totally ignored the ½ hour time span between when Tips president Mr Inga signed in the IRS Mountainside office until the time of the Ms Lee fax. Ignoring the time line Mr Schwarmann either has perjured himself or has relied upon a bogus statement from Ms Lee stating Tips kept coming back all day long ---Ms Lee repeatedly refused Mr Inga then all of a sudden Ms Lee finally decided to do the 3/14/07 letter---A totally conjured up story.

While Mr Schwarmann has stated that Ms Lee was not able to provide the FCC referral letter. Mr Schawramnn's certification does not make the same "not authorized" statement for the Taxpayer Advocate Service 4/3/07 letter. Mr Schwarmann may know that the IRS website explicitly states that the Taxpayer Advocate Service has the authority to resolve an IRS impasse. Tips believes that the IRS Investigation/Rewards Department wouldn't have recommended and referred and provided the phone number to Tips to contact the IRS Taxpayer Advocate Service if the IRS Investigations/Rewards Department did not believe that the situation had called for it.

AT&T filed a totally frivolous sanctions request to the FCC when the FCC had never even questioned either the 3/14/07 or 4/3/07 IRS letters provided to resolve Tips IRS issues. AT&T now concedes that the presumptions that it made against Mr Inga to the FCC were not ones that AT&T believed it could justify making to the IRS. **Only the FCC got the trumped up allegations AT&T now asserts--- not the IRS. AT&T's bragging that it attempted to only scam the FCC. If that is not frivolous filing than what is?**

AT&T did not even notify the FCC about any of its "trumped up sanction issues" until many months after they allegedly occurred. AT&T saw the overwhelming 1995 and 1996 evidence discovered by petitioners over the last few months and AT&T knew it was totally beat.

So AT&T then resorted to its attempt to get the case dismissed against petitioners' when most of AT&T's alleged issues are with the non petitioner--- Tips—in case 06-210. The FCC can clearly see the scam AT&T is trying to pull off.

This flagrant abuse of the Commission's processes is sufficient, in and of itself, to merit the severest sanctions available against AT&T. The fact that AT&T has attempted to defend this misconduct by making additional false or misleading statements simply underscores the necessity of sanctions against AT&T.
AT&T footnote number 4 page on page 11:

> Betraying a well-founded concern that his latest misrepresentations will be exposed, Mr. Inga has submitted two separate emails asking the Commission to prohibit AT&T from responding to his Opposition. *See* Email of Mr. Inga to Ms. Shetler (July 15, 2007) (attached hereto as Exh. 26); Email of Mr. Inga to Ms. Shetler (July 9, 2007) (attached hereto as Exh. 27). There is of course no legitimate basis for this extraordinary request.

The motion to prohibit AT&T from filing comments regarding Tips interaction with the IRS and FCC was not filed by Tips**, it was filed by Joseph Kearney**. While AT&T states that request was extraordinary the facts show otherwise. AT&T did nothing to pierce Tips corporate veil in its 6/12/07 filing. Tips is not a petitioner in case 06-210 and therefore AT&T's comments against Tips are not relevant to the four petitioners actions and are not relevant to Tips as Tips did

nothing wrong.

Tips has no problem defending its actions as it had already more than adequately shown with its 6/29/07 filing which of course was prior to the two emails AT&T has referenced of July 15th 2007 and July 9th 2007. Additionally the record should be clear that it was Ms Shetler's statement that neither AT&T's motion **nor Mr Kearney's counter motions** would be addressed by the FCC.

AT&T was lucky the FCC has decided not to rule on the motions as AT&T with its relying on the questionable 3/23/07 letter and very questionable July 10th 2007 certification from its IRS auditor---- turned investigator Mr Schwarmann.

Since Mr Schwarmann claims he works out of Mountainside he would surely would know that there was a security sign-in registry in the Mountainside IRS lobby. However Mr Schwarmann was hell-bent on helping AT&T by refusing Tips wishes to provide him evidence and failing to look for the IRS Mountainside lobby sign in log to verify the accuracy of the statements that Mr Schwarmann asserts under oath that he was told by Ms Lee when conducting his AT&T initiated investigation.

IRS investigators (TIGTA) obviously verified with Ms Lee that Tips president Mr Inga did not make multiple visits to the Mountainside office—refused Tips several times---thereby pressuring Ms Lee.

Mr Schwarmann's recount of his investigation of Ms Lee is thus not consistent with what the IRS TIGTA investigators heard from Ms Lee. If Tips president Mr Inga had pressured Ms Lee or made numerous visits throughout the day hounding Ms Lee as Mr. Schwarmann certifies, the IRS issue would not have been dismissed so quickly by TIGTA. The documented time line simply can not be refuted.

AT&T page 12:

> **The IRS confirmation that the March 14th letter was not authentic,** the Treasury Department investigation into that letter, and Mr. Inga's failure to explain the origins of the letter even after he was informed of Mr. Schwarmann's March 23rd letter confirm that AT&T reacted appropriately.

When AT&T above states the IRS confirmation that the letter was not **authentic** AT&T is talking about none other than its auditor turned investigator, Mr Schwarmann. The same Mr Schwarmann whose certification does not refute the fact that he refused to return any calls of Tips and was basing his actions on the Ms Lee fax that did not contain her final documentations added – A) her name stamp, B) her initials, C) her badge number D) and the markings Sent OK in reference to the fax she sent.

AT&T comically states above Mr Inga's **failure to explain the origins of the letter**! Roy Schwarmann refused all evidence. Tips had to fully explain the situation to IRS TIGTA once Mr Schwarmann elevated the AT&T initiated investigation to TIGTA. While TIGTA may have concluded that Ms Lee was not authorized to issue the 3/14/07 letter that certainly does not mean that the letter was not authentic. It was authentic--not fabricated.

AT&T 13:

> AT&T's entire interaction with the IRS concerning the March 14th letter and the events thereafter consisted of forwarding the letter and accompanying documents to Mr. Schwarmann, a**sking for his views on the letter's authenticity**, and having two phone conversations with an agent of the Treasury Department.

AT&T's attempting to cover –up for the fact that it had its IRS auditor elevate the investigation to TIGTA and not itself? Did asking for Mr Schwarmann's (an AT&T's tax auditor) "views" include the release of the 3/23/07 Schwarmann letter in which Mr Schwarmann **failed to identify who he was?** Who's idea was the July 10th 2007 certification? Mr Schwarmann did this all on his own?

Then AT&T utilized the 3/23/07 Schwarmann letter in AT&T's brief of April 2nd 2007 to Judge Wigenton's NJ District Court **as if** Schwarmann was an IRS TIGTA investigator!!! Who is Mr Schwarmann to opine on IRS referral regulations and release letters regarding what another IRS employee working in an entirely different capacity is able to issue?

Even though it later turned out that the Mountainside office manager Ms Russell agreed that Ms Lee did not have the capacity to do such a letter----why would Mr Schwarmann assume TIGTA's role? We have an IRS auditor (Mr Schwarmann) who continues to do the job of a TIGTA agent even after he escalates the investigation to TIGTA!

Never mind Mr Schwarmann completely disregarded the evidence that Tips wished to submit but

Mr Schwarmann refused to return the call. If Tips knew that Mr Schwarmann was just an AT&T auditor put up to the task by AT&T, Tips would have never attempted to contact Mr. Schwarmann. Tips would have gone directly to IRS investigators.

The 3/23/07 Mr Schwarmann letter made it seem that Mr Schwarmann was IRS TIGTA agent and he had already conducted an unbiased investigation----which he obviously did not. If Mr Schwarmann was well aware of Ms Lee's job duties he would have also known that it was customary for Ms Lee to add all her documentation after faxing---but obviously Mr Schwarmann did not know this was Ms Lee's proper methodology. It is unbelievable that Mr Schwarmann literally ran a one sided slant going completely over TIGTA's function. TIGTA agent Richard Kowle has informed Tips that Mr Schwarmann was not to be involved in the investigation once TIGTA was involved and has requested a copy of the July 10th 2007 certification.

Does AT&T counsel actually think the FCC believes its instructions for Mr Schwarmann were to simply "review the letter." Furthermore why would AT&T go to its IRS auditor and not directly to IRS TIGTA? If AT&T didn't know about TIGTA why didn't Mr Schwarmann immediately turn over AT&T's investigation request to TIGTA instead of making a quick call to Tips then hanging up on Mr Inga and refusing to return the several calls left on Mr Schwarmann's voice mail.

It seems that Mr Schwarmann is obviously mad that Tips had to point out to the IRS Investigations Rewards Dept that AT&T buried the shortfall charges in non disclosed settlement agreements like the Furst Group situation evidenced in Tips 6/29/06 FCC filing---and failed to pay federal excise taxes or possible taxes on barter. It is simply unbelievable that Mr Schwarmann would so blatantly take it upon himself to usurp TIGTA's authority and run a one sided investigation!

AT&T page 13:

> Mr. Schwarmann's recent July 10, 2007 letter confirms that, before sending his March 23, 2007 letter, **he conducted a thorough investigation that included discussions with the "Taxpayer Service employee who had faxed the 3/14/07 letter**." Exh. 22 attached hereto. Thus, before sending his letter, Mr. Schwarmann knew precisely who had faxed the March 14th letter **and the events leading up to the fax.** *Id.* That he may not have had the "finished product," with Ms. Lee's stamp and badge number, Opp. at 15, is immaterial.

First AT&T writes copy cat certifications telling the FCC that Mr Schwarmann was simply asked to "review" the 3/14/07 letter and now AT&T tells the FCC that Mr Schwarmann "**conducted a thorough investigation"** that included discussions with the Taxpayer service employee who faxed the 3/14/07 letter!

AT&T boldly states that Mr Schwarmann knew the events leading up to the fax! How so? He never returned a phone call, hung up on Tips president Mr Inga, and received no written documentation from Tips.

Mr Schwarmann in fact knew absolutely nothing regarding the events prior to Tips president Mr Inga being directed by the Springfield Taxpayer Advocate Service to the IRS Mountainside NJ office in error by the IRS in Springfield.

In fact Mr Schwarmann's 3/23/07 letter shows that he did not even know that it was Ms Lee as he stated it was **an IRS employee**. He didn't know it was an IRS employee because he was reacting to the fax from Ms Lee which **did not include** the final documentation of her name stamp, her initials, her badge number, etc.

No wonder why AT&T is making all these AT&T statements **for Mr Schwarmann**. Why doesn't Mr Schwarmann certify to all these things that AT&T says Schwarmann allegedly knew prior to the 3/14/07 letter? Since when is Mr. Schwarmann who has seeming wants to be a TIGTA agent instead of a tax auditor so shy?

Additionally for AT&T to supposedly know so much of what Mr Schwarmann supposedly knew leading up to the 3/14/07 IRS letter is certainly not consistent with AT&T's assertion that it just kinda said "Hey Roy (Schwarmann) please review this 3/14/07 letter and that was the end of it.

Seems like there was an awful lot of conversation going on between Mr Schwarmann and AT&T for AT&T to make the statement that its auditor **knew all about the events leading up to the 3/14/07 letter.** AT&T just keeps feeding the rope to hang itself as it keeps screwing up trying to cover its misrepresentations.
AT&T page:15

> That he may not have had the "finished product," with Ms. Lee's stamp and badge number, Opp. at 15, **is immaterial.**

Immaterial! Mr Schwarmann made a statement to used in the NJ District Court that the document produced **was fabricated.** Mr Schwarmann acted as if he was fully aware of the proper methodology used by the Mountainside office staff. To make such statements anyone would be led to believe that Mr Schwarmann was intimately familiar with the Mountainside staffs job duties and their methods and procedures.

If Schwarmann knew their job duties he would have therefore had to have known that the IRS employee name stamps, signs, and adds their badge number after the fax goes through. Therefore Mr Schwarmann should have known that the document was not fabricated because the fax always superseded the added documentation.

Furthermore TIGTA saw the 3/14/07 document was faxed from the IRS office and didn't have available to it the final Ms Lee document and still **TIGTA understood that the document was not fabricated by Tips.**

AT&T page 13 footnote 5:

> Mr. Inga apparently bases these claims on AT&T's **passing reference**, in its sanctions motion, that "presumably" Mr. Inga knew someone in the Mountainside, N.J., office. *E.g.*, Opp. at 76. AT&T **theorized** that this might be the case because it could not understand how Mr. Inga had an obviously fabricated IRS letter sent from an IRS office and because Mr. Inga had never offered any explanation for how he obtained it

AT&T now seeks to downplay its false accusations leveled by AT&T as only a **passing reference**.

AT&T's incredible baseless allegations page 14 of its 6/12/07 FCC filing:

> In his accompanying March 16th letter to the Commission, Mr. Inga states that he was "a former Enrolled Agent (EA) of the United States Treasury Department and thus a top tax law specialist." *See* Ex-Parte Comments of Tips Marketing Services, Corp. Regarding Internal Revenue Service Primary Jurisdiction Referral to FCC In Support of Petitioner's Declaratory Ruling Request (March 16, 2007) ("March 16 Ex-Parte Comments") at 1. **As such, Mr. Inga *"presumably knew people"* who *worked at the IRS* in New Jersey, where he resides.** It is ***simply inconceivable*** that anyone other than Mr. Inga would have "walked into the Mountainside NJ Internal Revenue Service Taxpayer Service Office" and asked someone to fax this letter.

Some **passing reference to the FCC**! Imagine the crap that AT&T's master con artists would have conjured up if it wasn't only a **passing reference**!

Furthermore AT&T asserts that it did not make such allegations to the IRS---then why did AT&T decide to only make the false allegations to the FCC with zero evidence? Is this is not an admission of a frivolous FCC filing then what is? How can AT&T justify making the false allegations to the FCC but claim that the FCC shouldn't be concerned because it did not make the same false allegations to the IRS?

AT&T knew that its allegations of favoritism were not only made against Tips president Mr Inga but also questioned the IRS employee's objectivity and thus maybe AT&T did not make the allegations---maybe Mr Schwarmann made the favoritism allegations. Based upon the statements made by the TIGTA investigators it sure did seem like AT&T or Mr Schwarmann made false allegations of Mr Inga getting a favor done or possibly compensating an IRS employee.

AT&T believes that it enjoys the ability to file false allegations at the FCC because AT&T obviously believes the FCC should be willing to deal with AT&T's bogus allegations with zero evidence supplied. AT&T's penchant of not letting the facts get in the way of a good fairy tale is all too common and the FCC should deal with these AT&T con artists. Passing reference huh! What a scam!

AT&T counsel has gone far past the point of advocacy and now relies upon copy cat certifications that it wrote for its employees that do not even prove in any way that Tips misled

the FCC. Furthermore AT&T relies upon the letter and certification of its IRS auditor who is a wannabe TIGTA agent, who conducts investigations on his own without obtaining evidence from both parties and overlooked the IRS Mountainside lobby security sign in registry that proves Mr Schwarmann's statements in his 3/23/07 letter and July 10th 2007 certification were inaccurate.

AT&T's suggestion that petitioner's should be sanctioned in these circumstances is simply outrageous. Petitioners are more than justified in seeking sanctions, even more so now that AT&T has confirmed the obvious—the March 14th 2007 letter was investigated by its own tax auditor who played TIGTA agent but disregarded and refused all evidence. Now AT&T asserts that the allegations made against Mr Inga were only made to the FCC not the IRS.

Now AT&T relies upon the Schwarmann certification that asserts false and misleading statements in AT&T's effort to defend its misconduct and shift the blame to petitioners. Once again, AT&T's willingness to make such an unfounded and irresponsible request confirms that sanctions are not only proper but necessary to stop AT&T's abuse of the Commission's processes.

AT&T Page 16 footnote 8:

> Contrary to Mr. Inga's claim, AT&T has not asserted that his companies "abandoned [their] *claims* on shortfall and termination issues." Opp. at 45 (emphasis added). AT&T said that his companies had abandoned "their efforts to have their shortfall and discrimination issues *referred to the Commission"* AT&T's Mot. for Sanctions at 6 (emphasis added). AT&T agrees that these claims are still pending in the District Court and are subject to its stay.

The shortfall and discrimination claims were never abandoned nor were petitioner's effort to have the claims referred or heard by the FCC abandoned---No Judge has ever ruled such.

Petitioners exhibits A, B, and C in its 6/29/07 FCC filing all are statements from AT&T that the shortfall and discrimination claims **were already before the FCC and the DC Circuit**.

Furthermore the FCC's General Counsel Austin Schlick confirmed prior to the Judge Bassler's referral that whether or not the District Court refers any particular issues, petitioner's had the right to request the FCC to issue Declaratory Rulings---which it did on September 27th 2006.

AT&T page 17:

> Mr. Inga's claim that AT&T sought a referral of these issues, Opp. at 4, is equally baseless and rests on a completely disingenuous attempt to conflate issues that Mr. Inga has previously acknowledged are entirely distinct. He has raised two separate "shortfall" issues. **The first is his argument that PSE did not have to assume CCI's obligation to pay shortfall charges because the plans were "pre-June 17, 1994 plans" and thus immune from such charges.**

Petitioner's have never argued that because the plans were pre June 17th 1994 grandfathered and thus immune from shortfall infliction that this determined which obligations transferred on a "traffic only" transfer. Revenue commitments and their associated shortfall and termination obligations **do not** transfer on "traffic only" transfers whether or not the transferor's plans were pre June 17th 1994 grandfathered as was the case here. AT&T shows zero evidence of petitioner's taking such a position.

Petitioners have only stated that it would be a violation of 201(b) of the Communications Act for AT&T to prohibit the transfer of accounts based upon fraudulent use (section 2.2.4). AT&T bogusly asserted that it was being defrauded of shortfall charges when AT&T knew that the transferor's plans were all immune. This statement has nothing to do with 2.1.8---it has to do with 2.2.4-- and other fraudulent use sections. As former AT&T sales manager Joseph Kearney has repeatedly stated S&T obligations never transfer on a "traffic only" transfer no matter whether the plans wee pre June 17th 1994 issued or not.

AT&T is trying to twist what it asserted to the District Court in exhibits A, B and C of petitioners 6/29/07 filing but there is just no wiggle room even for the best con artists in the business. When AT&T was referring to shortfall it was explicitly referring to the imposition of shortfall charges in June 1996.

Exhibit A in petitioners June 29th FCC filing is AT&T's District Court brief of June 13th 2005 at

Pg 2 para 3)

> Rather than reinstitute the proceedings at the FCC, the Inga Companies have now asked this Court to resolve the **open issueS** and to rule on a series of technical issues of tariff interpretation. Under their view, the Court should now determine such matters as whether the phrase "all obligations" in Section 2.1.8 somehow excludes minimum volume/term commitments; **whether these commitments are part of the "minimum payment periods"** within the meaning of 2.1.8; **whether the plans in question are "pre1994" plans to which "shortfall" charges allegedly could not apply;** and what significance was of AT&T's withdrawal of a subsequent tariff transmittal-- and to resolve these tariff issues in a manner consistent with the **nondiscrimination requirements** of 47 U.S. C. Section 202(a) and of the FCC's implementing regulations. *"All"* **these issues were previously raised in the FCC and the DC Circuit proceedings, and all these issues can be efficiently decided by the FCC now--under the DC Circuit Decision.** In light of the DC Circuits decision, it is understandable that the Inga Companies would want to try to shift forums mid-stream and to re-litigate these technical tariff and other issues in a Court outside the DC Circuit. But this forum shopping is not only itself illicit; it is barred by the terms of this Courts stay, by the Third Circuit's earlier mandate and by the doctrine of primary jurisdiction.

Above AT&T is explicitly is referring to the **application** of shortfall

> ;whether the plans in question are "pre1994" plans to which "shortfall" charges allegedly could not **apply**

Notice in the 6/29/07 Exhibit A how AT&T separates the previous issue listed to the shortfall issue above with a semi colon:

> **whether these commitments are part of the "minimum payment periods"** within the meaning of 2.1.8;

And AT&T also stated discrimination should be addressed by the FCC.

> with the **nondiscrimination requirements**

For AT&T to now argue that shortfall and discrimination issues should not be decided by the FCC is completely contrary to its position in exhibits A, B, and C.

Exhibit B in petitioner's 6/29/07 filing is AT&T's position to the District Court of 6/13/05 Page 12 para 2:

> In this regard, the Inga Companies' motion is vivid proof that it is asking the Court now to decide **issues that were previously referred to the FCC by this Court and the Third Circuit alike**. For the arguments that it is now asking the Court to resolve are, without exception, technical claims of tariff interpretation and communications policy that the **Inga Companies previously submitted to the FCC.** In particular, before it made these precise claim**s** in its motion to lift the stay, the Inga Companies had argued both before the FCC and the DC Circuit that:
>
> **********
>
> (6**) that other transfers that occurred in the past also support the Inga Companies' positions.** Obviously, the Inga Companies made these claims to the FCC because they knew full well that these issues were encompassed within this Court's and the Third Circuit's primary jurisdiction referrals, and these epitomize the technical issues of tariff interpretation and communications policy that fall within the FCC's primary jurisdiction. That confirms that the **issues** cannot be adjudicated in this Court under its prior order and the Third Circuit's mandate.

Exhibit C in petitioners 6/29/07 filing is AT&T's May 22nd 2006 letter to the NJ District Court page 1:

> Plaintiffs made the same argument**S** to the FCC that they are now raising in this Court. Their prior submissions to the agency confirm that **the issueS they ask this Court to decide are "all" encompassed within this Court's primary jurisdictional referral. And "all" of these issueS and arguments are best decided by the agency.**

District Court Transcript pg. 20 line 9:

> Mr. Guerra: First of all, firstly, everything counsel said was in fact a question of **interpretation.**

Furthermore look at exhibits D and E within petitioner's 6/29/07 FCC filing which AT&T explicitly states that the shortfall application issues should be resolved by the FCC.

See 6/29/07 FCC filing **Exhibit D** is AT&T's **1996** Joint Petition for Declaratory Ruling Page 3 para 1

> As to this issue, **which does not require any findings as to disputed facts**, the Commission should rule that **shortfall charges may be imposed** where, as here,

> post **June -17th 1994** CSTPII replacement plans are discontinued or reach an anniversary date.

See petitioner's 6/29/07 filing at **exhibit E** is AT&T's **1996** Joint Petition for Declaratory Ruling

Page 14 para 2

> Petitioners have identified an issue which is currently **"ripe"** for a declaratory ruling; i.e., whether "pre-June 17th, 1994 CSTPII plans, as are involved here, may never have **shortfall charges *imposed***, as long as the plans are restructured prior to each one-year anniversary**.** "**No factual questions surround this question"**

AT&T's **2003** FURTHER REPLY COMMENTS TO FCC Page 3 para 1:

> Accordingly, the Commission should deny the Joint Petition, and should instead issue the ruling requested by AT&T in its Comments **filed in 1996 that shortfall charges** may be **imposed** where, as here, post-**June 17, 1994 CSTP II** replacement plans are discontinued or reach an anniversary date.

AT&T is clearly referring to the **imposition** of shortfall charges as to what AT&T did in June 1996. AT&T is definitely **not** referring to shortfall charges under 2.1.8 transferring.

Also notice in exhibits A, B and C to the 6/29/07 filing that AT&T stated that there were issues (plural) that were already before the FCC not the singular "traffic only" transfer issue. The AT&T con artists simply can not lie its way out of the clear statements to the District Court that All the issue**s** should be determined by the FCC.

AT&T page 17:

> The second is his claim that AT&T's "**brief imposition" of shortfall charges** on end-user accounts was improper. The "shortfall ***immunity"* argument is directly related to the "all obligations" issue,** which is why AT&T has agreed that it is encompassed by Judge Bassler's referral. **The "shortfall *infliction"* (sometimes referred to as the "illegal remedy" or "shortfall permissibility")** claim, by contrast, is wholly unrelated to the "all obligations" issue and thus not encompassed by the referral.

AT&T can not escape the clear evidence presented to the FCC in petitioners 6/29/07 FCC filing at Exhibits A, B, C, D and E which clearly shows AT&T's argument to the District Court that the shortfall charges ***imposed*** in June 1996 should be determined by the FCC.

The scam is that AT&T wants the FCC to believe that when it was referring to imposition of shortfall charges to the FCC in 1996 and to Judge Bassler in 2005 and 2006 that it was in reference to section 2.1.8. So what does AT&T do to attempt to con its way out of this one?

The AT&T con artists AT&T re-define what the common terms used throughout the briefing now mean. AT&T now creates a new phrase: The "**shortfall immunity argument**" which AT&T relates to only the "traffic only" transfer issue (AT&T says it relates to the "**all obligations"** issue under section 2.1.8). Then AT&T takes two different phrases which have meant two distinct shortfall issues and has combined them as meaning the same issue when it says:

> The "shortfall *infliction"* (sometimes referred to as the "illegal remedy" or "shortfall permissibility")

Throughout this case the term "permissibility" has been used in reference to debate over the duration of the grandfathered ***immunity*** period due to the June 1994 grandfather provision. In contrast the term shortfall "illegal remedy" has solely to do with the illegal method in which AT&T applied the shortfall charges on the end-users bills instead of the tariffed remedy of applying the shortfall charges on the aggregators single master 181 number account.

Whether or not shortfall charges were permissible (due to the parties dispute on the duration of the June 17th 1994 immunity period) on the CSTPII plans in June 1996 has nothing to do with the illegal remedy.

If the shortfall charges were permissible but illegally applied it still would be an illegal remedy. Thus even if the shortfall charges were permissible AT&T could not rely upon the shortfall charges due to the illegal remedy in which it applied the shortfall charges to the end-users, instead of the aggregators single master account.

In petitioners case the shortfall charges were NOT permissible and illegally applied.

Here is a sample of the term "permissibility" being used to describe a different claim than the illegal remedy "method of infliction":

See the April 3rd 2007 IRS letter at the end of the first paragraph:

> Therefore, please resolve all declaratory Ruling requests on shortfall issue**S** made by petitioners vs AT&T within case 06-210 currently before the FCC, **involving the permissibility and proper method of infliction** of shortfall and termination phone service charges.

The two issues (plural) relating to the June 1996 shortfall infliction are clearly "permissibility and method of infliction i.e the shortfall application illegal remedy. Petitioners can evidence many more examples.

After 12 years AT&T now seeks to redefine its defense ----conjuring up a "shortfall immunity" argument that related to 2.1.8. The immunity argument is the June 17th 1994 permissibility issue and has always been but it does not determine which obligations transfer under 2.1.8.

AT&T's assertion to the District Court evidenced in petitioner's June 29th 2007 FCC filing at exhibits A, B, and C, clearly referenced **imposing shortfall charges** -----(**not transferring shortfall obligations)** as being an issue that needs to be decided by the FCC. The imposing of shortfall charges directly relate to the June 1996 shortfall infliction not 2.1.8 or the two words "all obligations" that AT&T takes out of context.

Exhibit A in petitioners June 29th 2007 filing which was AT&T's June 13th 2005 brief to the District Court clearly stated:

> ***"All"*** these issues were previously raised in the FCC and the DC Circuit proceedings, and all these issues can be efficiently ***decided by the FCC now*****--under the DC Circuit Decision.**

Also see Exhibit D and E in petitioner's 6/29/07 filing in which AT&T explicitly informs the FCC in its 1996 Joint Petition uses the terms in
exhibit D: **"shortfall charges may be imposed"** and in
exhibit E "**shortfall charges imposed**"

AT&T's former assertions to the District Court and the FCC were clearly that the June 1996 shortfall issues **(and the discrimination issues)** should be decided now by the FCC.

AT&T attempts to cover-up for its position that June 1996 shortfall imposition and the discrimination claims are before the FCC by asserting a "brand new" misrepresentation from its

master con artists. The AT&T con artist will stop at nothing in its attempt to scam the FCC.

AT&T's counsel has gone way past the borderline of advocacy into pure deceit. These continuous AT&T submissions of intentional lies with **zero evidence** to back it up should not be tolerated by the Commission. AT&T's attempt to tell the FCC today that it was **not** AT&T's position to both Judge Bassler's District Court in 2005 and 2006 and the FCC in 1996 that the June 1996 shortfall issues were indeed before the FCC- is a complete AT&T scam.

AT&T knows it is a farce because AT&T itself identified the shortfall issue as relating to section 3.3.1.Q.4 in its FCC comments on Dec 20th page 32:

> **Section 3.3.1.Q.4** allowed for the discontinuance of a CTSPII plan without liability if two requirements were met. First, the customer had to replace its "existing" plan with a "new" plan that had a total revenue commitment equal to or exceeding the sum of the remaining commitment of the plan that was being "cancelled." See Exh. 14. Second, if the customer did not satisfy the prorated annual commitment of the plan being terminated, the customer had to **pay a prorated shortfall charge.** Id. As to this requirement, however, § **3.3.1.Q.4** provided an ***exception,*** known as the "grandfather clause": "CSTPII Plans in effect on or prior to June 17, 1994" were not subject to such shortfall charges.

Yes the June 17th 1994 exception (i.e. "shortfall immunity" issue) did allow the aggregators to restructured its plans without charges but as AT&T conceded to the FCC on Dec 20, 2007 it was not in relation to section 2.1.8 at all---it was—as the AT&T con artists clearly understood related to **section 3.3.1.Q.4. –not the "all obligations" phrase in 2.1.8 that the AT&T con artists assert.**

You see, the AT&T scam is as attempt to assert to the FCC today that AT&T's former position of what should be decided by the FCC was only directly related to section 2.1.8's "traffic only" transfer. Exhibits A, B, C, D, and E in petitioners 6/29/07 filing indeed evidence that it was AT&T's position to the FCC in 1996 and Judge Bassler in 2005 and 2006 that sections 3.3.1.Q.4. June 17th 1994 immunity grandfather clause was "ripe" to be adjudicated by the FCC due to the fact that there are no disputed facts. These AT&T arguments were solely based on its **alleged right to inflict shortfall charges in June 1996.**

Now carefully watch how the AT&T master con artists continue its scam of the Commission on

bottom of page 17-18

> The various passages Mr. Inga quotes from AT&T's briefs all concern **"shortfall immunity,"** not the "**shortfall infliction"** issue Mr. Inga has improperly tried to inject. *See* Opp. at 5 (quoting AT&T's reference to "'pre-1994' plans to which '**shortfall charges allegedly could not apply**'"); *id.* at 7 (quoting AT&T reference to **issue of "whether 'pre-June 17th, 1994 CSTPII plans . . . may never have shortfall charges imposed'"**).

AT&T again spins what it states above:

> *See* Opp. at 5 (quoting AT&T's reference to "'pre-1994' plans to which '**shortfall charges allegedly could not apply**'")

AT&T was referring to the June 17th 1994 shortfall immunity provision and its affect on the June 1996 **application of shortfall charges** under section 3.3.1.Q.4. That is why AT&T stated the word "apply." AT&T's statement had nothing at all to do with shortfall **obligations transferring** under section 2.1.8, which it wishes to scam the FCC into believing. It was about **shortfall charges** applying not **shortfall obligations** transferring.

Now take a look at AT&T's next attempt to re-define what it said:

> *id.* at 7 (quoting AT&T reference to issue of "whether 'pre-June 17th, 1994 CSTPII plans **. . .** may never have shortfall charges imposed"'). FOOTNOTE 10

Notice above how AT&T counsel again does another one of its DOT DOT DOT **…** scams as it partially quotes its own statement to the FCC in 1996.

See the entire AT&T quote at petitioners June 29th 2007 **exhibit E** which is AT&T's **1996** Joint Petition for Declaratory Ruling Page 14 para 2:

> Petitioners have identified an issue which is currently "ripe" for a declaratory ruling; i.e., **whether "pre-June 17th, 1994 CSTPII plans, as are involved here, may never have shortfall charges *"imposed"*, as long as the plans are restructured prior to each one-year anniversary**. **No factual questions surround this question.**

AT&T decided that the beginning, the middle and the ending parts of its statement should be left out:

AT&T left out the beginning of AT&T 's assertion to the FCC:

> Petitioners have identified an issue which is currently "ripe" for a declaratory ruling; i.e.,

Because AT&T did not want to remind the Commission that it was AT&T's position that there were no disputed facts and it was ready for a ruling.
AT&T then did its DOT DOT DOT **…** routine to bypass the words:

as are involved here

Why did AT&T do its DOT DOT DOT routine? Certainly not because 4 words were too many to type! AT&T simply did not want to remind the FCC that it was AT&T's position that the plans were all pre June 17th 1994 immune from shortfall charges.

Then AT&T simply forgot to add the critical ending:

> **as long as the plans are restructured prior to each one-year anniversary**. No factual questions surround this question.

The restructuring of CSTPII plans under section 3.3.1.Q.4 has no effect on the "traffic only" transfer under section 2.1.8. AT&T was clearly referring to the permissibility of inflicting (i.e. imposing/applying shortfall charges in June 1996 on the pre June 17th 1994 CSTPII plans, as it further explains restructuring prior to anniversary dates. The "traffic only" transfer issue under section 2.1.8 has nothing to do with AT&T's assertion in the above exhibits about "traffic only" transfers as AT&T attempts to scam the FCC that section 3.3.1.Q.4 dictates 2.1.8's issue of which obligations transfer. At exhibit A in petitioner's 6/29/07 AT&T states:

whether the plans in question are "pre1994" plans to which "shortfall" charges allegedly could not *apply*;

AT&T tries to equate **shortfall charges applying** (what it argued to Judge Bassler as should be decided) with **shortfall obligations transferring**. Don't fall for this AT&T scam!!!

Anytime you see AT&T do its DOT DOT DOT quoting watch out!! AT&T counsel loves to short quote and do its little DOT DOT DOT **…**scam when it does not want the FCC to read the entire excerpt.

AT&T attempted the same DOT DOT DOT **…**scam when AT&T quoted section 2.1.8 in a

previous FCC submission.

AT&T on page 1 of its May 1st 2007 brief **partially quotes** section 2.1.8 to hide a critical part of 2.1.8:

> WATS, including any associated telephone number(s), may be transferred or assigned to a new Customer, *provided that***…. [T**]he new Customer notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment.

The AT&T con artists quoted the beginning of section 2.1.8 then used the DOT DOT DOT **…** scam to **totally bypass paragraph A of section 2.1.8** then AT&T picked up section 2.1.8 at paragraph B's all obligation paragraph after the DOT DOT DOT**…** . Why did AT&T do this? Too much to type? NO!

Because the "all obligations" phrase in paragraph B of section 2.1.8 relates to what is selected for transfer between the Former and New Customer within paragraph A of section 2.1.8 as AT&T's own counsel Mr Carpenter explained to the DC Circuit.

Para B of 2.1.8 pertains to what is selected for transfer between the former and new customer in para A. If the plan is not selected for transfer within Para A then under 2.1.8 the plan obligations (revenue commitments and associated S&T obligations) must stay with the transferors plan as per 3.3.1.Q bullet 10. exhibit D in petitioner's 9/27/06 filing.

AT&T's con is to take the words "all obligations" out of context of 2.1.8. Notice in AT&T's quote how it italicizes "*provided that* then gives the "good old" dot dot dot (…) routine to take attention away from what Section 2.1.8 stated in full:

Here is 2.1.8:

> Transfer or Assignment – WATS, including "**ANY"** associated telephone number**(s),** may be transferred or assigned to a **new Customer**, provided that:
>
> **A.** The Customer of record **(former Customer requests)** in writing that the company transfer or assign WATS to the **new Customer**.

B. The "**new Customer" notifies the Company** in writing that it agrees to assume all obligations of the former Customer **at the time of transfer** or assignment. These obligations include: **(1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).**

C. The Company acknowledges the transfer or assignment in writing. The acknowledgement will be made within 15 days of receipt of notification.

AT&T's ploy is to completely divert attention to Section 2.1.8 paragraph A. Para A:

A. The Customer of record **(former Customer requests)** in writing that the company transfer or assign WATS to the **new Customer**.

The New Customer then reports to AT&T in Para B.

Paragraph B is conditioned upon what is reported by the NEW CUSTOMER and transferred between the Customer of Record (CCI) and the new Customer PSE. It is actually very simple. All obligations pertain to only what is transferred. As in most contracts one paragraph is conditioned upon a preceding one.

All the obligations on what is transferred between the former customer and the new customer is transferred. The new customer presents how much traffic (i.e. how many account locations) or the plan that it is accepting from the former customer and assumes the obligations on what it accepts. The DC Circuit stated that it did not see on its face where 2.1.8 allows traffic only transfers because the word "any" were missed. "Any" can be one, some, or many. If 2.1.8 allowed only plan transfers the "any " would have to be "all" numbers.

There is clear relevant history to show that AT&T intended for one sub paragraph in section 2.1.8 to pertain to or modify a previous sub paragraph in 2.1.8 as 2.1.8(b) pertains to what is selected and reported by the new customer for transfer within sub para 2.1.8(a) and 2.1.8's opening.

As the Commission is aware AT&T proposed that Tr. 8179 was to go into section 2.1.8 as under paragraph "C" i.e. 2.1.8(c). See petitioner's exhibit L in its 9/27/06 filing. However just because it would go into affect as 2.1.8(c) it **would have an affect upon** 2.1.8's para "B" "2.1.8(b)---which contains the "All Obligations" phrase that AT&T attempts to takes out of context.

The proposed Transmittal 8179 was an amendment to 2.1.8, that was not allowed by the FCC, but if passed would have changed the status quo of 2.1.8 (a) and 2.1.8(b) and would have required the entire plan to transfer and its associated S&T obligations when a **substantial** "traffic only" transfer was ordered. Sub para 2.1.8(c) would "interact with" the other previous sub paragraphs.

Likewise section 2.1.8(b)—as Mr Carpenter explained "depends upon" what is transferred-between the new Customer and Former Customer within 2.1.8(a) and 2.1.8's "any" "number(s)" intro. AT&T is trying to take two words "all obligations" out of context of the entire 2.1.8 section. The intro line of 2.1.8 and the interaction between the parties within Para A is critical. Obligations transferred then depend upon what was selected and reported by new customer for transfer ("traffic only" or the plan).

AT&T will also remember when it used its DOT DOT DOT **…** scam in quoting to DC Circuit in its post oral argument brief in quoting Section 3.31.Q bullet 10.
Whereas the tariff states:

> For billing purposes, such penalties **shall reduce any discounts** apportioned to the individual locations under the plan.

AT&T's did this type of maneuver:

> For billing purposes, such penalties are **…**apportioned to the individual locations under the plan.

The AT&T scam artists did not want to focus attention on the fact that **there is a cap limit** to impose shortfall charges (only up to the discount amount on the end-users bill)

AT&T could not apply shortfall charges as it did in June 1996 for multiple times the entire bill – see exhibit NN in petitioner's 9/27/06 filing. This is an illegal remedy.

AT&T also stated on page 17:

> The second is his claim that AT&T's "**brief imposition"** of shortfall charges on end-user accounts was improper.

AT&T seeks to downplay the June 1996 shortfall application illegal remedy by stating it was a

brief imposition--- as if the charges were there one minute and gone the next, and had no affect on petitioner's!!!

Boy these AT&T con artists can really love to re create history. AT&T conveniently forgets that it advised all end-users that called AT&T to "just say you were slammed and we will take the shortfall charges off the bill and return you back to AT&T."

When end-users got bills that were many times higher than their normal bills they went crazy and called AT&T and AT&T erroneously blamed petitioners. Additionally the end-users called their attorneys, State Public Utility Commissions, etc. AT&T's rhetoric about a **brief imposition** lasted a month and petitioner's goodwill was **immediately and permanently lost**. The only thing that AT&T's removing the charges from the bills and putting the shortfall charges on the single master account shows is that AT&T knew it violated it tariff by using an illegal remedy and tried to correct it but it was too late---the damage had been done.

AT&T page 18: Footnote 10

> The same is true of the passage Mr. Inga quotes from his motion for reargument before Judge Bassler. See Opp.at 47 ("Additionally, these plans were ***immune from S&T liabilities*** due to the fact that **tariff section '2.5.7'** was enacted which **waives actual S&T obligations**") (quoting Exh. F to Further Comments of Petitioners Regarding Consolidation and Extension (Jan. 8, 2007)).

Again AT&T is attempting to scam the FCC—but what else is new!! Petitioner's comments were made concerning its claim for waiver of shortfall obligations in its 9/27/06 Declaratory Ruling Request under **section 2.5.7** of AT&T's tariff not the tariffed transfer **section 2.1.8.** The immunity that AT&T quotes has nothing to do with section 2.1.8 –only to do with section 2.5.7.

See section 2.5.7 at exhibit II in petitioner's 9/27/06 filing as it explains shortfall obligations are waived due to Circumstances beyond the Customers Control. What the AT&T con artists have attempted is to tie in what petitioners were arguing **under section 2.5.7** about being ***immune from S&T liabilities*** due to circumstances beyond the customers control and apply it to a totally different **section 2.1.8**—and then bogusly assert that this is what AT&T was referring to the FCC and District Court as the shortfall immunity argument within 2.1.8.

The AT&T scam was to try and get the FCC to believe that there was a shortfall immunity issue under section 2.1.8 and this is what AT&T wanted the District Court and the FCC to resolve. In actuality the words that AT&T highlighted by italicizing: “immune from S&T liabilities” ---has to do with the imposing of shortfall charges in June 1996—exactly the opposite position of what the AT&T con artists now attempt to scam the FCC with.

Section 2.5.7 has nothing to do with section 2.1.8. This AT&T attempt to scam the FCC is not due to AT&T’s ignorance or advocacy. AT&T knows full well it was trying to pull another scam over on the FCC.

On a separate note--- petitioner’s section 2.5.7 argument to Judge Bassler that ---AT&T has referenced ----only further proves that petitioner’s did not solely argue that the “traffic only” transfer section was the only issue to be addressed by the District Court and or referred to the FCC.

AT&T footnote 11 page 18:

> Indeed, on the very next page of the transcript, Judge Bassler noted that, if the Commission agreed with AT&T's interpretation of § 2.1.8's "all obligations" language, the parties would still "have this issue of discrimination in this Court" and Mr. Guerra agreed: "You would, Your Honor." See Exh. 31, attached hereto (emphasis added). Mr. Guerra was thus plainly arguing that the discrimination claims in the Supplemental Complaint would be decided in Court.

The fact that Mr Guerra agreed that **one** of the discrimination issues could **also** be decided in District Court does not mean Mr Guerra was also arguing that the discrimination issue could not be interpreted by the FCC to give the Court needed guidance to terminate a controversy or remove uncertainty.”

The above discrimination is only one of the discrimination issues. The other has to do with AT&T refusing to provide a contract tariff to petitioners despite petitioners having the most traffic of any AT&T aggregator according to AT&T’s own Revenue At Risk Report (see exhibit HH in petitioners 9/27/06 filing).

This particular discrimination issue deserves the FCC’s interpretation. AT&T’s position is that it had the right to decide who gets a contract tariff and who does not despite the fact that petitioners qualified for many but were told by its AT&T account manager that AT&T is not giving it a

contract tariff no matter whether petitioner's qualified for one that was available within the 90 day public window or not. The FCC has been provided numerous exhibits in the Petitioners May 18th 2007 filing showing how AT&T discriminated against petitioner's access to a contract tariff.

AT&T does not even attempt to argue how the discrimination issue of not allowing petitioners access to a contract tariff will be resolved by the FCC's interpretation of which obligations transfer on a "traffic only" transfer, or how this relates to section 2.1.8.

AT&T page 18-19

> Mr. Inga understands the difference between his "shortfall immunity" and discrimination-based interpretation arguments, on the one hand, and the "shortfall infliction" and discrimination claims in the Supplemental Complaint, on the other hand. He told Judge Bassler that the issues raised in the Supplemental Complaint were "separate and distinct" from the "account movement issue." Exh. 17 to AT&T Comments at 2

Mr Inga understands what AT&T is talking about? Mr Inga had to read AT&T's new BS several times trying to understand what scam AT&T was looking to pull this time!!! Petitioners have learned from experience that anytime AT&T introduces a brand new scam that it starts out with "Mr Inga understands" or "they know" to give the impression that this has been an ongoing argument.

It has been almost a year before the FCC and an incredible amount of comments have been filed. This is the first time the FCC and petitioners are hearing about this new "shortfall immunity issue" and "discrimination-based interpretation arguments". AT&T is simply trying to introduced a new scam in a pathetic attempt to cover up for its previous position to the FCC that the June 1996 shortfall issues and the discrimination issues should be decided by the FCC.

The June 1996 shortfall issues deal with:
A) the pre June 17th 1994 grandfather immunity provision to determine the permissibility of AT&T applying S&T charges
AND
B) the illegal remedy used in applying shortfall to end-users application

These are separate and distinct from the "traffic only" transfer issue under 2.1.8, however that

does not mean that AT&T did not represent to Judge Bassler's District Court in 2005 and 2006 and the FCC in 1996 that these issues were **"ripe"** to be decided by the FCC.

The pre June 17th 1994 shortfall immunity provision is obviously 6 months prior to the Jan 1995 "traffic only" transfer issue. The fact that these plans –as determined in the FCC's 2003 Decision---were all pre June 17th 1994 issued and thus immune from shortfall liabilities being applied only relates to AT&T's attempt to utilize its **Fraudulent Use sections** of its tariff to prohibit the traffic only transfer, BUT this has absolutely nothing at all to do with determining which obligations transfer **under section 2.1.8!**

There has never been any so called "shortfall immunity argument" relating to section 2.1.8---The only arguments regarding shortfall immunity have been in reference to the permissibility of the June 1996 shortfall infliction and the Fraudulent Use sections. AT&T could no longer argue fraudulent use due to the illegal remedy that it used. AT&T had argued that there was no way that the petitioners were going to be able to meet the revenue commitments that remained with the CSTPII transferors plans once most of the account traffic was transferred to PSE. Therefore AT&T prohibited the "traffic only" transfer based upon the fraudulent use provisions of its tariff ---not section 2.1.8. AT&T's fraudulent use argument was an admission in and of itself that S&T obligations do not transfer on a "traffic only" transfer.

The only shortfall immunity issue that AT&T could have possibly asserted to Judge Bassler in 2005 and 2006 as still needing FCC interpretation could only have been in reference to the June 1996 shortfall permissibility issue. This dealt with the debate over the duration of how long the CSTPII plans could remain immune from S&T charges under the June 17th 1994 grandfathered immunity provision. There is no possible way any way you look at it that AT&T was arguing that "shortfall immunity" had to do with section 2.1.8.

Whether the CSTPII plans were immune or not immune from shortfall charges under the Discontinuation With Liability Section of the tariff which includes the June 17th 1994 grandfather immunity provision----- has absolutely nothing to do with the fact that S&T obligations do not transfer on a "traffic only" transfer under section 2.1.8. There was no so called shortfall immunity argument to be interpreted in relation to 2.1.8 as AT&T's con artists attempt to scam the Commission. AT&T counsel must really think petitioners and the FCC are

all complete morons to present such an AT&T incredible scam. AT&T has done nothing here other than introduce another absolutely pathetic brand new creation after 12 years in an attempt to cover–up for the fact that it clearly took the position that all issues should be determined by the FCC.

AT&T Misrepresents Charles Helein's Statements

And the Intent of His AT&T Request

AT&T page 20:

> Mr. Inga disingenuously asserts that "Mr. Helein was not seeking to debate what issues were to be decided," but rather inquiring to see if AT&T agreed that a declaratory ruling was the proper procedural vehicle.

Mr. Helein did not say that there are no other issues to be addressed before the FCC.

Mr Inga is certifying that the instructions given to Mr Helein were solely to determine whether the "traffic only" transfer issue was to be done by Formal Complaint or Declaratory Ruling process.

If the "traffic only" transfer issue had to be done by formal complaint then petitioners were going to file a formal complaint on the "traffic only" transfer issue and separate Declaratory Ruling requests for the shortfall and discrimination issues. However since AT&T agreed that the "traffic only" transfer issue should be done by declaratory ruling petitioners instead filed one Declaratory Ruling request with multiple claims. It is as simple as that.

Right after Mr Helein's emails with AT&T counsel petitioners advised its AT&T contact person Mr Umholtz of the additional Declaratory Rulings that it was filing and what issues petitioners believed were encompassed within Judge Bassler's primary jurisdiction referral phrase " as well as any other open issues".

No where did Mr Helein state that there are no other issues to be addressed before the FCC.

If AT&T actually incredibly believed Mr Helein wished to limit his client to just the "traffic only" transfer issue, AT&T was shortly thereafter advised directly by petitioners that AT&T's erroneous belief was obviously wrong. It should also be noted that the advisement by petitioners to AT&T's contact person **was done well in advance of the Oct 1st 2006 deadline** that Judge Bassler gave petitioners to file with the FCC. AT&T is acting as if petitioner's changed its mind

or worse changed its mind after the deadline had already passed. There was no change in position.

AT&T once again is making a big deal out of nothing. If it erroneously believed that Mr Helein was limiting petitioners as to what claims it was to file that was quickly clarified. Why in the world would Mr Helein who filed petitioners 1996 Joint Petition to the FCC which included claims for shortfall charges infliction and discrimination issues seek to limit petitioners? AT&T can not even provide a reason why petitioners would limit itself to just the "traffic only" transfer issue. AT&T's point makes absolutely no sense as usual.

As the evidence shows Mr. Helein's reason for inquiry to AT&T was whether or not AT&T agreed that petitioners were going to use the Declaratory Ruling process as opposed to the Formal Complaint process to decide the "traffic only" transfer issue. Mr Helein was not seeking to debate what other issues were to be decided.

Review AT&T's exhibit 7 in its 6/12/07 filing and the focus of the letter was the use of the Declaratory Ruling process. Mr Helein states in the beginning of the letter in AT&T's number 7 exhibit:

> **The issue you are being contacted about is to determine if AT&T will agree to using a declaratory ruling proceeding by which to obtain the FCC's decision. The alternative is to proceed by formal complaint.**

and at the end Mr Helein states:

> **This email seeks AT&T's agreement that the proper proceeding to file with the FCC is a petition for Declaratory Ruling.**

Can't be much clearer as to what the focus was. Mr Helein's instruction from petitioners was simply to confirm with AT&T that the process would be done via the Declaratory Ruling process. Petitioners followed up with all issues it was to address very soon afterwards.

What occurred was that AT&T counsel not only confirmed Mr Helein's position that Judge Bassler's referral should be done via the Declaratory Ruling process, Mr. Jacoby attempted to re-frame the "traffic only" transfer question of Judge Bassler in an entirely different manner. See exhibit H in petitioners 6/29/07 filing is the email from Mr. Jacoby.

> I am writing in response to your email message to Eric Einhorn of AT&T's Federal Regulatory group, **requesting AT&T's agreement that a petition for declaratory ruling is the proper procedural vehicle** for the Federal Communications Commission to resolve the issue referred to the Commission under the doctrine of primary jurisdiction for the reasons stated in the federal district court's May 31, 2006 order (copy attached). AT&T agrees that the referred issue arises from the D.C. Circuit's decision holding that Section 2.1.8 of ATT's Tariff F.C.C No. 2 applies to "traffic-only" transfers. The issue the D.C. Circuit left for FCC resolution was whether Section 2.1.8's requirement that a transferee "assume all obligations of the former Customer **at the time of transfer** or assignment" includes the obligations to ***pay*** any applicable shortfall and termination charges. **We agree that this issue is properly resolved by way of a declaratory ruling.**

As you can see Mr Jacoby both opens and closes his statement confirming the request of Mr Helein as to use of the Declaratory Ruling process.

In the middle Mr. Jacoby's statement that transferors had to ***"pay"*** **shortfall and termination charges "at the time of the transfer" obviously does not have to do with precisely which obligations transfer**.

Mr. Helien certainly was not acquiescing that there were no other issues before the FCC. Petitioners went to the FCC's Mr. De Laurentis after the Judge Bassler referral and stated that it believed that the adjudication of the issues should be done by the Declaratory Ruling Process.

Mr. De Laurentis advised that before petitioners file, the FCC encourages the parties to decide if there would be a Declaratory Ruling or a Formal Complaint. Mr. De Laurentis also answered a procedural question regarding whether the Commissions procedures allowed for the combining of Declaratory Rulings with Formal complaints. Mr. De Laurentis stated that only Declaratory Rulings can be combined---a Declaratory Ruling can not be combined with a Formal Complaint.

Therefore petitioners wanted to go the route of the Declaratory Ruling Process for the "traffic only" transfer issue because it already believed that the shortfall and discrimination issues should be declaratory rulings. Petitioners believed that June 1996 shortfall issue and the discrimination issues were Declaratory Rulings because AT&T had strongly asserted to the FCC in 1996 that the shortfall issues were "ripe" for resolution because there were no disputed facts. See exhibits D and E in petitioners 6/29/07 filing. Additionally AT&T had advised Judge Bassler that

Shortfall and Discrimination issues were ready to be resolved by the Commission at exhibits A, B, and C in petitioners 6/29/07 FCC filing.

AT&T page 20:

> But as Mr. Helein's email makes plain, the nature of the issue to be resolved is **essential to determining which procedural vehicle is proper,** because issues involving factual disputes cannot be resolved in a declaratory ruling proceeding. This is why Mr. Helein specified the issue, and why he stated that: "The issue it is believed is purely legal involving no disputed facts [m]aking the proper proceeding a declaratory ruling."

AT&T is simply confirming the entire point to Mr Helein's email –the resolution of how the "traffic only" transfer issue was to be resolved –by either Declaratory Ruling or Formal Complaint. The other issues (shortfall and discrimination) were already believed to be understood as Declaratory Ruling type claims due to AT&T's previous position that these issues were "ripe" and that there were no disputed facts.

As the exhibits at H in petitioners 6/29/07 filing evidences, petitioners Mr Inga reached out to AT&T prior to its 9/27/06 filing to advise AT&T what Declaratory Ruling requests it would be seeking. Exhibit H in petitioners 6/29/07 shows that after the September 12th 2006 correspondence with AT&T regarding whether the "traffic only" transfer would be a formal complaint or Declaratory Ruling---just 4 days later on Sept 16th 2006 petitioners notified AT&T of the additional Declaratory Rulings it was seeking. This was of course well before the Oct 1st 2006 deadline that the District Court gave petitioners to file with the FCC.

Although AT&T asserted to Judge Bassler that all issues were to be ready to be decided by the FCC (see exhibits A, B, C in 6/29/07 filing) and the FCC was the place to resolve "all the issues"; however once the parties got to the FCC----AT&T pulled a typical scam and completely reversed its position without showing the FCC any evidence of disputed facts.

AT&T asserted that the FCC's General Counsels position that petitioners could define any issue it wished meant absolutely nothing according to AT&T.

Exhibit H in petitioner's 6/29/07 filing clearly shows that prior to petitioners 9/27/06 filing of the

Declaratory Ruling Requests, petitioners clearly let AT&T understand that there were several Declaratory Ruling requests that petitioners were seeking. There certainly was no misconduct by petitioner's. **AT&T attempts to completely change the *only focus* of Mr Helein's letter-----to proceed by Declaratory Ruling OR Formal Complaint.**

It is irrefutably clear that petitioners argued to Judge Bassler all issues. It is irrefutably clear that AT&T had already agreed that the shortfall and discrimination issues were—as AT&T asserted-----"ripe to be decided by the FCC" because as AT&T asserted to the FCC there were no disputed facts.

It is also clear that petitioner's sought out the FCC's General Counsel and General Counsel Austin Schlick confirmed that petitioners would have the right to "define the issues" for the FCC to resolve over a year before Judge Bassler decided to refer the case to the FCC.
See page 3 of Exhibit A to petitioners 9/27/06 filing for the FCC's General Counsel Mr. Schlick's statement:

You can define the issue which you seek a Commission Ruling

Petitioners had clear understanding that the FCC has been given broad discretion to "terminate a controversy or remove uncertainty."
The FCC stated so at pg 11 para 15 of its 2003 Decision at exhibit B in petitioners 9/27/06 filing:

> The Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to "terminate a controversy or remove uncertainty. 5 U.S.C. § 554(e); 47 C.F.R. § 1.2; *see also* 47 U.S.C. §§ 154(i), (j); *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C.Cir.), *cert denied*, 414 U.S. 914 (1973).

AT&T simply can not refute that the shortfall and discrimination fall into the category of terminating a controversy or removing uncertainty.

AT&T's has clearly attempted to reverse its clear prior position to the FCC in 1996 (Exhibits D and E in ptnrs. 6/29/07 filing) and the District Court in 2005 and 2006 (exhibits A, B, C in ptnrs 6/29/07 filing) that the shortfall and discrimination issues are ready and should be adjudicated by the FCC. AT&T's pathetic attempt to cover-up its prior position with:
A) short quotes and spin of its own words and
B) the creation of its incredible never before heard "shortfall immunity argument" relates to its all obligations" nonsense----would be absolutely comical if petitioners were not waiting 12 years

for justice.

It is easier to follow Abbott & Costello's "Who's on First Routine than AT&T's newly created "shortfall immunity" scam and how it determines which obligations transfer on a "traffic only" transfer under section 2.1.8--- that AT&T bogusly asserts that petitioners' supposedly have understood for the last 12 years!!! AT&T had reduced it brief to nothing more than a **total joke** at this point simply bent on delaying the FCC's resolution of all the issues. AT&T's continued assertion of such utterly baseless arguments is itself sufficient to justify sanctions against AT&T.

AT&T footnote 12 page 20:

> Mr. Inga claims he abandoned his threat to return to the District Court in order to let the Commission decide "whether or not the Judge Bassler referral encompassed the shortfall and discrimination issues **due to the ambiguity of Judge Bassler's referral."** Opp. at 54. This is not only absurd on its face—**the Court was obviously best positioned to resolve any supposed ambiguities in its own order**

Again AT&T does not let the facts get in the way of its fairy tale. The reason why petitioners did not immediately return to the District Court is AT&T had represented to the District Court that the shortfall and discrimination issues were "ripe" to be decided by the FCC. By the time AT&T wrote its Dec 20th 2006 FCC comments and **reversed its position** of having the shortfall and discrimination issues adjudicated---Judge Bassler was already retired! So when AT&T states:

> "the Court was obviously in best positioned to resolve any supposed ambiguities in **its own** order"

The retired Judge Bassler had already been replaced by Judge Wigenton and Judge Wigenton would be just as clueless as to what Judge Bassler meant by the phrase "as well as any other open issues" as the FCC. Therefore petitioner's asked the FCC for a ruling then asked for reconsideration.

Reconsideration of the FCC's Jan 12th 2007 Order was dropped by petitioners. Petitioners only dropped the reconsideration when AT&T again was up to its delaying tactics by arguing to Judge Wigenton that the issue of whether Judge Basslers referral encompassed shortfall and discrimination issues was currently before the FCC for resolution so she should not rule. As usual AT&T sought to tie the Courts hands by stating the issues were before the FCC. When

before the FCC claim the issues are at the Court and when before the Court claim the issues are at the FCC. The scam is so apparent.

AT&T's April 2nd letter to Judge Wigenton Page 6-7 which is exhibit 17 in AT&T's 6/12/07 FCC filing:

> Third, Mr Arleo's request is particularly inappropriate because it is **duplicative of relief his clients are currently seeking from the FCC itself.** As Mr Arleo notes, his clients submitted a formal request that the FCC reconsider a Jan 12th 2007 order which stated that the various issues his clients wish to raise before the agency are not encompassed within the primary jurisdiction referral. The parties have fully briefed that request for reconsideration and it is still pending before the Commission. To initiate a similar request before the FCC has ruled is a waste of both judicial and agency resources, and disrespectful of this Court's (as well as the agency's) processes.

When petitioner's saw that the FCC had no time table to rule on its reconsideration request petitioners asked new District Court Judge Wigenton if petitioners could file a brief seeking to modify the referral and send it back to the FCC. Judge Wigenton refused to even consider allowing petitioners to file a brief to support its position that the shortfall and discrimination issues were encompassed within Judge Bassler's: "as well as any other open issues" referral and Judge Wigenton rejected petitioners request to modify the FCC referral. Judge Wigneton's Order was filed by AT&T on the FCC server on June 21st 2007. The Order states:

> Plaintiffs Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc.**'s request for a briefing schedule and/or modified referral to the FCC,** as contained in their correspondence dated May 31, 2007, is **DENIED**. The stay issued by the Honorable William G. Bassler's, U.S.S.D.J., Order of May 31, 2006 shall remain in effect.

AT&T has argued that petitioners "Ran to the District Court" to get away from the FCC because of petitioners misconduct. Obviously this was just more AT&T nonsense. The letter to Judge Wigenton was expected to result in an explicit referral from the Court back to the very same FCC---- that the AT&T con artists asserted that petitioners were "running from"---- due to AT&T's trumped up misconduct allegations.

AT&T has asserted that petitioners did not go back to the Court initially due to AT&T's threat of sanctions. AT&T should know by now that petitioners do not recoil due to AT&T's trumped up

bogus “water pistol” sanction threats. Such baseless “water pistol” threats from the scam artists only serve to show the FCC and Courts that AT&T has no defense and now resorts to trumped up scare tactics.

AT&T footnote 13 page 20:

> Similarly, there is no basis for Mr. Kearney's motion to compel AT&T to produce evidence concerning "Why every other aggregator and direct AT&T customer was allowed to do a traffic transfer both before and after petitioner's traffic transfer and no revenue commitments were ever transferred." Mot. to Prohibit AT&T from Addressing Tips IRS Issue & Motion to Compel AT&T to Produce Evidence (July 12, 2007) at 2. As AT&T has previously explained, **whether AT&T permitted other traffic transfers** does not "alter the plain language of § 2.1.8."

The obvious reason why no revenue commitments and their associated shortfall and termination obligations never transferred on a “traffic only” transfer prior to and after petitioners Jan 1995 “traffic only” transfer is that this simply was the correct interpretation for section 2.1.8---as also confirmed by the multitude of evidence provided by petitioners showing the concessions of AT&T’s counsels Meade, Carpenter, Friedman, Barillari, Brown, Fash and Whitmer and the certification from AT&T employee Carl Williams. Recognizing that all of the aforementioned AT&T counsel have already conceded that S&T obligations do not transfer, AT&T now has moved to yet another counsel to sign its FCC Comments—Mr. Guerra.

AT&T now seems to have changed its position again. Now AT&T concedes that no other aggregators or direct AT&T customers were ever required to transfer revenue commitments and S&T obligations on “traffic only” transfers. It took this long for AT&T to finally concede that no AT&T “traffic only” transfer ever transferred S&T obligations. The FCC and petitioners of course surmised this because AT&T of course could not provide a stitch of evidence showing one “traffic only” transfer in which S&T obligations actually transferred--despite claiming to Judge Politan that it did thousands of “traffic only” transfers as of March 1995.[3]

So now AT&T’s new position is that it did all the “traffic only” transfers without S&T obligations transferring but according to AT&T it shouldn’t have done them as per section 2.1.8. AT&T bogusly asserts that it was correct in prohibiting petitioners for doing the exact same

[3] See within petitioner’s FCC filing Date Received/Adopted: 05/22/07 exhibit I
MR. WHITMER: But there are literally -- my guess is hundreds, if not thousands, of transfers that have happened among aggregators and aggregation plans.

thing as thousands of others. Imagine AT&T is actually taking the position that it was correct in stopping petitioners but it screwed up when it let thousands of other exact replica "traffic only" transfers from going through without transferring S&T obligations. You believe this AT&T's nonsense?

However, in AT&T's "proposal" defense AT&T explained that the reason why AT&T did **not** allow petitioners "traffic only" transfer was because what petitioners ***"proposed"*** was of course different than what all other AT&T customers were doing that was **supposedly proper.** AT&T's position was that these thousands of other "traffic only" transfers did indeed transfer their plans S&T obligations but because petitioners ***proposed*** to not transfer their S&T obligations, that this was a violation of 2.1.8. Even AT&T's scams conflict.

The following evidences AT&T's new "proposal defense" for all of its counsels who pointed out that S&T remained with petitioners and CCI's plans and PSE is not obligated to assume S&T obligations:

AT&T Dec 20th 2006 page 28-29:

> Petitioners cite a **series of statements by AT&T lawyers that simply described the transfer petitioners *"proposed"***-i.e., one in which CCI would transfer virtually all traffic to PSE, while CCI alone would retain the obligations **AT&T FOOTNOTE 16 HERE**
> Just like the Commission's similar summaries of this proposal, see supra at 24-25, these statements described what CCI and PSE wanted to do, not what they were legally permitted to do under the tariff.
> **FOOTNOTE 16 page 29**
> See Petri. at 18 (Meade "concession" that, under proposed transfer, CCI would have rendered itself an "assetless shell unable to either fulfill its commitments or to **pay its shortfall and termination charges**") (emphasis omitted); id. at 19 (Whitmer "concession" that Mr. Inga sought to transfer traffic "**and leave the plans intact with their commitments**") (emphasis omitted); id. at 20 (Friedman "concession" that, under proposed transfer, petitioners **would remain "responsible for the tariffed shortfall and termination charges**") (emphasis omitted). See also id. at 6 (quoting AT&T's explanation to the Third Circuit that, after transfer, petitioners would be responsible for shortfall and termination charges, "**which can only be paid by [petitioners] from revenues they would lose as a result of the transfer"**) (emphasis omitted).

AT&T Dec 20th 2006 page 29

> Accordingly, **any AT&T statement that a transferor remained liable for such obligations** after the transfer was in no sense a "concession" that shortfall and termination obligations did not transfer. Footnote 17
> Footnote17
> See Petn. at 18 (Fash "concession" that traffic transfer would leave transferor with no assets "to pay tariffed charges associated with the plan").

AT&T not only used its "proposal" defense in a feeble attempt to cover-up for its counsel AT&T incredibly told the FCC that its own 2.1.8 analysis was also based upon what was proposed not what the tariff allows:

AT&T Dec 20th page 6:

> In stating that PSE would not assume responsibility for shortfall obligations, however, **the Commission** was simply describing the transfer as **proposed.**

Imagine AT&T actually telling the FCC that the Commission was not interpreting the tariff but just what petitioners ***proposed.*** The Commission was explicitly asked to interpret the tariff and that is what the Commission did. The order submitted---as PSE's cover letter states---was to be done "**properly"** (exhibit F in petitioners 9/27/06 filing) and there was no proposal to do it in any other fashion than the tariff permitted.

If you believe in AT&T's "Proposal Defense" you also have to believe that AT&T provided petitioner's co-plaintiff CCI with a multi million dollar settlement package based upon CCI's "proposal" which AT&T states was outside the norm for section 2.1.8. CCI's president Larry Shipp at deposition stated that AT&T mandated that CCI had to help AT&T defend itself against petitioner's claims which were of course based upon the same so called "proposal." Imagine AT&T wanting the FCC and DC Circuit to believe that AT&T provided this compensation package based upon a **proposal** outside the required norm for 2.1.8?

The FCC knows better and so does the DC Circuit.[4]

Judge Politan explicitly stated that petitioners submitted order did not change the status quo. Petitioners were indeed submitting an order in compliance with 2.1.8 and not a proposal outside 2.1.8. See petitioner's FCC filing Date Received/Adopted: *05/22/07* at exhibit HH in which Judge Politan directs AT&T counsel Mr Barrillari:

> THE COURT': I'm sure you'll do what is appropriate. What I'm saying to you is… the plaintiffs are not doing anything to change the status quo. It is up to you to implement it.

The District Court's 1995 **non vacated** Decision found in petitioners exhibit Reply-A in its 1/31/07 filing on page 9 para 2:

> Moreover, plaintiffs allege that AT&T has further violated the Act by failing to ***"comply with the plain terms of its own tariff",*** **namely section 2.l.8,** which makes no reference to any deposit requirement and contains no cross-reference to that section of the tariff which allows deposit demands, namely section 2.5.8. Additionally, plaintiffs allege that AT&T's danger of losing on the Inga companies' commitments **was less after the Inga companies/CCI transfer than before. For instance, "plaintiffs point out that under the tariff rule of**

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[4] DC Circuit Court Page 10 Line 20

> JUDGE GINSBURG: Well, you said **all obligations**.
> JUDGE TATEL: **Well, that's *"only"* if the whole plan is transferred.**

Judge Ginsburg also understood S&T obligations stay with CCI:
Judge Ginsburg correctly noted during oral argument page 27 line 18:

> Judge Ginsburg: **move it from somebody who's got the benefit of grandfathering and can get out *of its obligation* that way to somebody who's got the benefit of a larger discount.**
> FCC's MR. BOURNE: That's correct.
> JUDGE GINSBURG: Okay.

The DC Circuit clearly understood that petitioners transferred all obligations within 2.1.8: See DC Circuit pg. 11, n 2 ex. C in petitioners 9/27/06 filing:

> In a motion submitted after the argument however, the Inga Companies note that the ***ONLY OBLIGATIONS*** enumerated by Section 2.1.8 are outstanding indebtedness for the service and the unexpired portion of any applicable minimum payment period**.**

If AT&T wanted S&T to transfer, by law, it had to explicitly state so.

> **transfer"**: (i) AT&T had security in the fact that it. AT&T, bills the end users directly; (ii) AT&T could pursue CCI for the going-forward non-payments arising from the transferred plans, while having recourse to the Inga' companies for all pre-transfer non-payments; and [iii] that **AT&T could look to CCI and/or the Inga companies for shortfalls in the minimum annual commitment levels under the plans.**

Above Judge Politan confirms that petitioner's "traffic only" transfer was adhering to the tariff as Judge Politan stated: "**plaintiffs point out that under the *tariff* rule of transfer"**

This leaves no doubt that Judge Politan was agreeing that petitioners were explicitly following the **tariff's rules of transfer** and not, as AT&T bogusly asserts, ***proposing*** a transaction outside the tariff rules of transfer. Additionally the FCC's 2003 Decision explicitly references the First--non vacated—Judge Politan Decision agreeing with Judge Politan's' obligation allocation analysis which Judge Politan confirmed petitioners were acting within 2.1.8.—not a proposal outside 2.1.8. There would be no reason to point out the tariff rule of transfer if petitioners intended to act outside it!

AT&T counsel Mr Meade explained in AT&T's 2/16/1995 Substantial Cause Pleading to the FCC's Mr Nall that the tariff revisions—which AT&T tried to retroactively enact to cover petitioners transfer--- were to cover all customers (plural) and not just petitioners' "traffic only" transfer:

> Dear Mr. Nall
> AT&T submits this letter to demonstrate that there is substantial cause for applying the tariff changes set forth in Transmittal 8179 to AT&T **customerS** receiving services under existing term plans and Contract Tariffs.

Mr. Meade in AT&T's Substantive Cause Pleading:

> **The Transmittal Clarifies Existing Tariff Terms**
> As a clarification of existing tariff provisions rather than a substantive change, the proposed tariff provision should be applied to existing term plan and Contract Tariff customer**S** without any special showing.

See petitioner's FCC filing Date Received/Adopted: 05/09/07 at exhibit K page 22 para 1 (marked JA 116 on lower right hand corner.) These are FCC FOIA Notes from the FCC's AT&T

tariff expert R.L. Smith:

> **AT&T Substantial Cause Showing:** This raises the question of why two tariffs and various term plans **that affect far more than this one reseller**, need to be changed

See petitioner's FCC filing Date Received/Adopted: 05/09/07 on pages 59-62 which are excerpts of PSE's Petition to Reject Transmittal 8179 filed by its counsel Ms. Colleen Boothby. The exhibits for PSE's Petition to Reject Transmittal 8179 is found at exhibit R in petitioners 9/27/06 FCC filing. As PSE explained it did the exact same transaction as petitioners many times before and AT&T always processed the transaction. The only difference was due to the percentage of accounts being transferred, however there were no percentage caps within 2.1.8 as AT&T counsels Mr. Whitmer and Mr. Barillarri conceded to Judge Politan. That is why AT&T tried to retroactively enact Tr. 8179 (exhibit L in ptnrs. 9/27/06 filing) to mandate that when a substantial "traffic only" transfer was ordered the plan must transfer. Ms. Boothby's petition to reject clearly explains that AT&T normally processed "traffic only" transfers as ordered by petitioners. Therefore, Ms Boothby's filing is contrary to AT&T's bogus position that petitioners were "proposing" a transaction that was outside what it normally did for everyone. [5]

With its "proposal defense AT&T took the position that the reason it did not effectuate petitioner's "traffic only" transfer was because what petitioner's were **proposing** was **different** than what all others-both prior to and after were able to do in accordance with the tariff. This is obviously not so as petitioners requested what every other AT&T customer requested.

Given the fact that AT&T now concedes that AT&T allowed all others to do "traffic only" transfers in which S&T obligations do not transfer--- **then why didn't AT&T allow petitioners**

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[5] A few excerpts from PSE's Petition showing petitioners "proposal" was no different than all others:
I) The transmittal substantially changes the terms and conditions of virtually all of AT&T's long- term offerings **II)** AT&T hardly needs to disrupt every contract tariff it has filed **III)** But there is nothing inherently sinister, and more important, there is nothing *unusual* about transfers of substantially all locations in a plan. AT&T has received and processed many such transfer requests in the past. **IV)** But, as described in Section111.1, above, the revisions in Tr. No. 8179 would address not only this single case but all substantial transfers of locations from all plans regardless of the reseller's status or purpose. By sweeping so broadly, Tr. No. 8179 would have an anti competitive effect on the inter exchange marketplace

to do the same PROPER transaction---- that it now concedes it allowed others?

There was nothing different in what petitioner's so called ***proposal within*** its order submission to AT&T than what AT&T was doing for all others. Mr Meade explained to the FCC's David Nall that AT&T's issue was form over substance.

Richard Meade stated in a February 16, 1995 letter to the FCC's David Nall:

> AT&T is filing "at this particular time" to prevent a transaction that (at the minimum) elevates form over substance in an effort to avoid payment of shortfall charges.

Mr Meade was clear that petitioners did the transaction correctly (i.e. form) but AT&T didn't like it because too many accounts (i.e. substance). But as AT&T counsel Mr Whitmer and Mr Barrillari correctly asserted to Judge Politan in March 1995 during oral argument: the size of the transaction under 2.1.8 does not matter."

AT&T brief in 1996 to Third Circuit Page 12 footnote 5 quoting Meade's certification. See exhibit I in petitioners FCC filing Date Received/Adopted: 05/09/07:

> FCC Tariff Transmittal 8179 would have made explicit that an existing customer could not transfer even "substantially all 800 numbers on an existing plan under circumstances **where it would not be able to meet volume or term commitments** unless the new customer agreed to assume all of the existing customer's obligations. See Meade 2d Supp. Cert. ¶ 7 (AA 1267).

Above Meade again conceded that S&T obligations remained with the transferor plans.

AT&T Counsel Meade certified at exhibit N pg.7 para 15 to petitioners initial filing.:

> On October 26th 1995, AT&T Corp. filed Tariff Transmittal No 9229 with the FCC. Transmittal No 9229 addresses the ***problem*** implicated in the CCI-PSE transfer--- **the segregation of assets (locations) from liabilities (plan commitments)** --- in the following manner.

The problem Mr Meade sates of course was an industry wide problem with 2.1.8 that AT&T fixed on a prospective basis by adding deposit requirements as per Transmittal 9229.

So obviously AT&T's ***"proposal"*** defense that petitioners proposed something different than all

others is complete hogwash. The statements from all of its counsel that S&T obligations remain with the CSTPII transferor plans were indeed concessions from AT&T's counsels: Meade, Whitmer, Barillari, Brown, Fash and Friedman, that this was indeed how section 2.1.8 has always been interpreted.

Another major point that can not be overlooked is the fact that the AT&T Transfer of Service (TSA) Forms presented to AT&T by PSE do **not** state:

"Don't transfer the revenue commitment and the associated S&T obligations."

AT&T's "fairy tale" that it prohibited the "traffic only" transfer based upon petitioners "proposal" not to transfer S&T obligations could not be true based upon the PROPER TSA Order submitted to AT&T by PSE. It was not until the District Court initiation of the lawsuit (well after the 15 day statute of limitations under 2.1.8) that petitioners agreed with AT&T's Counsels Whitmer and Meade that S&T obligations do not transfer on "traffic only" transfers.

If S&T obligations were suppose to be transferred on petitioner's "traffic only" transfer than why didn't AT&T simply do what its tariff dictated? After all PSE submitted its TSA's and explicitly informed AT&T in the cover letter to do a **PROPER** transfer.

This entire FCC proceeding is moot because even if the Commission erroneously changes its 2003 decision and rules that revenue commitments and their associated S&T obligations must transfer on a "traffic only" transfer--- petitioners must still be declared victorious. Because if 2.1.8 mandated revenue commitments and their associated S&T obligations to transfer then that is what AT&T should have done. Petitioners only position was that it wanted to keep its plans and this has been decided in favor of petitioners by the DC Circuit.

Since the AT&T TSA's do not state "Don't transfer the revenue commitment and the associated S&T obligations"----AT&T's only responsibility was to simply process the order within 15 days -----period! AT&T loses whether or not the FCC decides the plans revenue commitments and their associated S&T obligations must transfer on a "traffic only" transfer.

Another point that must be considered is now that AT&T is conceding that it did thousands of "traffic only" transfers without the plans revenue commitments and their associated S&T

obligations transferring this further supports petitioner's "not explicit" 2.1.8 claim.

Very simple: Since AT&T believed in 1995 that under 2.1.8 that the plans revenue commitments and their associated S&T obligations **do not** transfer and then even if it is determined that the plans revenue commitments and their associated S&T obligations **must transfer** AT&T still loses on tariff section 2.1.8's non explicitly. If all of AT&T's counsel and its employees interpreted section 2.1.8 as not having to transfer revenue commitments and their associated S&T obligations in Jan 1995 this would obviously mean that 2.1.8 was not explicit if it latter determined that revenue commitments and their associated S&T obligations must transfer.

There were some people at AT&T that did not know how to interpret 2.1.8 at all which obviously means it was not explicit. See petitioners exhibit I in its 9/27/06 filing

> Al --Per our Conversation, 6/19; an original TSA is now required for transfer activity. Additionally we no longer process partial TSA's, the TSA must be for the whole plan. Joyce Suek"

TSA's is the acronym for the AT&T Transfer Of Service Agreement (TSA) which is verbatim section 2.1.8. (See all the TSA's at exhibit F in petitioners 9/27/06 filing) AT&T had interpreted that 2.1.8 no longer allowed "partial TSA's i.e. "traffic only" transfers –AT&T decided 2.1.8 only allowed plan transfers.

Also AT&T counsel Charles Fash did not understand 2.1.8 either:

See the AT&T counsel Charles Fash letter dated July 7th 1995 sent to petitioners counsel Mr. Mr. Helein; at exhibit H in petitioners 9/27/06 filing. He wrote:

> I will address the "partial TSA" issue first in general and then with your clients express and announced intentions. The Transfer of Service provision of the tariff addresses the issue of transfer of service, not transfer of traffic by moving individual locations from one plan to another. **The proper way to move traffic (i.e. a subset of locations on a plan) between plans is to submit service orders to delete the locations from one plan and add the locations to another.**

Mr. Fash misrepresented that service was somehow different than traffic just so the aggregator would not use 2.1.8 to easily move traffic in bulk without getting signatures. The DC Circuit Decision correctly stated at exhibit C pg. 10, para. 2 in petitioners 9/27/06 filing--- that traffic is

service:

> In absence of any contrary evidence we find that "traffic" is a type of service covered by the tariff.

The Mr Fash interpretation again proves that 2.1.8 was not explicit and therefore by law must be construed in favor of petitioners.[6]

Clearly, 2.1.8 contains no such explicit reference to S&T obligations transferring. The FCC correctly noted Rule 61.2 at pg. 10 footnote 65 which is at exhibit B to petitioners 9/27/06 filing, stating:

> Pursuant to Rule 61.2, titled "Clear and **explicit** explanatory statements, as in effect in January 1995, in order to remove all doubt as to their proper application, all tariff publications must contain **clear and explicit explanatory statements** regarding the rates and regulations." 47 C.F.R. 61.2 (1994). It is well settled rule of tariff interpretation that "tariffs are to be interpreted according to the reasonable construction of their language; neither the intent of the framers nor the practice of the carrier controls, **for the user can not be charged with knowledge of such intent or with the carriers canon of construction.** Associated Press Request for a Declaratory Ruling, 72 FCC 2d at 764-765, para. 11 (quoting Commodity News Services, Inc. v. Western Union, 29 FCC at 1213, para. 2.)"

Moreover, 47 C.F.R. 61.54(j) clearly holds that: Any special rule, regulation, exception or condition affecting a particular item or rate must be specifically referred to in connection with such item or rate.

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[6] **COMMON SENSE:** Whether the Mr Fash endorsed 3.3.1.Q bullet 4 "delete and add" position was used to transfer "traffic only" or petitioners section 2.1.8 request, both transactions would result in **no revenue commitments and associated shortfall and termination obligations being transferred to the new transferee anyway**. Under AT&T's bogus theory it is absurd to believe that S&T obligations transfer only under 2.1.8 but they do not transfer ---**as the DC Circuit clearly understood**—by deleting and adding accounts one by one under 3.3.1.Q bullet 4. The only reason an aggregator used 2.1.8 was simply so it did not have to individually delete every account off the transfer**or** plan and re-sign that customer to the transfer**ee** plan. **AT&T's Fash and Suek would not have advised all aggregators to use section 3.3.1Q bullet 4's "delete and add" account movement methodology if only 2.1.8 mandated that S&T obligations transfer but not 3.3.1.Q bullet 4.** The obvious reason why AT&T's Ms Suek and Mr Fash made their bogus declarations to not use 2.1.8 but use 3.3.1.Q bullet 4 was so aggregators could not easily move from the CSTPII/RVPP 28% discount plan to the CT516 discount plans of 66% owned by PSE and Tele-Save. Both PSE and Tele-Save had to bring legal action against AT&T to get the 66% discount plans which had only a $4 million commitment---whereas petitioners received only 28% discount on $54 million in billing.

Petitioners have extensively detailed AT&T's multiple concessions that 2.1.8 was not explicit within its 1/31/07 filing at page 61 under: **IX. Section 2.1.8 Was Not Explicit To Say the Least**
AT&T of course has not commented on its concession that 2.1.8 was not explicit.
By law the Commission must rule in petitioners favor as each Court has explicitly stated that 2.1.8 was not even clear let alone did it meet the standard of being "explicit" that it must legally adhere to.[7]
The reason why AT&T did not process the transaction was due to the size of the transaction and that is why it attempted to file Tr. 8179 retroactively. (Tr 8179 exhibit L in petitioners 9/27/06 filing. All of the other "traffic only" transfers that were done in which S&T obligations did ***not*** transfer were properly done under 2.1.8—petitioner's transaction was illegally prohibited due to the "size" of the transaction-but size does not matter. AT&T counsels Mr Whitmer and Mr Barillari explained 2.1.8 to Judge Politan: "The tariff, however, doesn't set **a** specific amount". See in petitioners FCC filing Date Received/Adopted: *05/22/07* at exhibit H.

AT&T July 18th 2007 page 20 footnote 13: In explaining that it allowed others to transfer "traffic only" without the S&T obligations transferring AT&T states:

> At most, it might be the basis for a separate discrimination claim, which is not before the Commission and which the District Court will address. **Additionally, such a claim is ill suited for a declaratory ruling, as it entails numerous disputed issues of fact.** Id. at 37-38. Hence, Mr. Kearney's request is inappropriate in this proceeding and should be denied.

AT&T of course does not raise any facts that are allegedly disputed. The only undisputed fact is that AT&T now concedes that it **properly** allowed all others to transfer "traffic only" but did not allow petitioners to do exactly what others were allowed to do.

AT&T July 18th page 21:

> **Mr. Inga's Improper Forum-Shopping Before the Commission.**
> Contrary to Mr. Inga's claim, Opp. at 47, AT&T does not seek sanctions because he abandoned his 2004 request for a referral of the shortfall infliction and

[7] FCC's MR. BOURNE During DC Circuit Oral Argument:
MR. BOURNE: Well, Judge Tatel, the Commission looked first at the language of Section 2.1.8 and found the language to be **ambiguous,** and concluded that, as the district court had.
MR. BOURNE: And the Commission's rules **require tariff provisions to be clear and explicit, and "this Court" has declined to enforce tariff provisions against customers in the past** when they failed that rule. And the Commission found that that was the case here.

> discrimination claims or chose to argue to the District Court that nothing should be referred.

Petitioner's did not abandon its 2004 shortfall and discrimination claims and of course there would be no reason to advise Judge Bassler that the shortfall and discrimination claims should not be referred.

Despite the fact that petitioners evidenced on page 46 and 47 of its 6/29/07 filing examples of its arguments to Judge Bassler other than the traffic only transfer issue AT&T simply asserts it was never argued.

Petitioners 01/12/07 FCC filing at Exhibit B shows that on page 8 of petitioners June 30th 2005 brief **to the NJ District Court** that petitioner's clearly argued the shortfall application illegal remedy despite AT&T's false assertion that petitioners abandoned its claims.

> In June of 1996, 18 months after AT&T's denial of the traffic transfer, AT&T initially placed millions of dollars of shortfall and termination penalties directly on plaintiffs' end-users even though the tariff required the penalties to initially be placed on plaintiffs' master compensation account. The infliction of these penalties by AT&T directly against the end-users owned by the plaintiff companies was an illegal remedy and this Court had previously found that the plans were immune from such penalties in any event.

Petitioner's have provided several additional pages of evidence where it argued to the District Court its shortfall and discrimination claims after AT&T alleges petitioners abandoned its claims. The below evidence was shown by petitioner's in its 1/12/07 FCC filing Exhibit E page 52 which AT&T also cited petitioners 2.5.7 claim to waive shortfall obligations in AT&T's July 18th 2007 brief on page 18 footnote 10:

> ("Additionally, these plans were immune from S&T liabilities due to the fact that tariff section **'2.5.7'** was enacted which waives actual S&T obligations") **(quoting Exh. F to Further Comments of Petitioners Regarding Consolidation and Extension (Jan. 8, 2007)).**

Petitioners have also provided the FCC with several other examples in its Jan 12th 2007 filing at exhibits A-E, in which petitioners argued the June 17th 1994 grandfathered immunity shortfall issue and the shortfall method illegal remedy issues before Judge Politan after AT&T alleges

petitioners abandoned its claims.

How ridiculous AT&T sounds actually trying to convince the FCC that petitioners would want to abandon its claims. AT&T of course provides no justification why petitioners would want to abandon its claims because there is no justification.

AT&T July 18th 2007 page 21 footnote 14

> Mr. Inga attempts to defend his taunting comments about the costs he has imposed on AT&T, AT&T's Mot. for Sanctions at 3, 21, by claiming that AT&T has somehow taken his comments "totally out of context and is playing reverse psychology," Opp. at 31.

AT&T's is the party that initially raised its bogus assertion that it was being over burdened with costs. AT&T counsel was not being taunted at all. Tips was simply pointing out that AT&T's counsels bogus over burdened by costs argument by petitioners filings was far fetched given the fact that AT&T counsel was sitting there getting paid $500 an hour to be allegedly over burdened with costs.

Taunting? Hardly! Petitioners are Jealous if anything! Petitioners and Tips and the FCC staff all wish it was getting paid $500 an hour on this case to read AT&T's fairy tales. AT&T counsel could have easily seen to it that less petitioner filings were made so it did not feel "so cost burdened" if AT&T counsel simply had restrained itself from its egregious misrepresentations that had to be responded to by Tips and petitioners.

Petitioner's do not enjoy having to counter all of AT&T's incredible nonsense. Petitioners are fully aware that additional filings only lead to a delay of justice for petitioners and therefore it is not in petitioner's best interests to file. Does AT&T actually believe that petitioner's strategy is to keep filing to force AT&T to what -- Cry Uncle? Give up? Force AT&T into bankruptcy with these FCC filings so petitioners don't get paid? AT&T's assertions of being cost over burdened are simply moronic. AT&T's bogus assertion that the filings are being done to cost burden AT&T counsel is one of AT&T's most comical assertions of these proceedings given the billions of dollars of resources of AT&T versus petitioners paltry resources.

AT&T July 18th 2007 page 22:

> As AT&T explained in its opposition to that request, the consolidation request was utterly without merit: not only is there no basis to Tips' petition, but there was

> absolutely **no overlap** between the issues Mr. Inga sought to raise through that petition and the issues raised in this proceeding.

The consolidation of the Tips Declaratory Ruling Request with Petitioners Declaratory Ruling Requests was done with respect to judicial economy solely due to the fact that the shortfall issues that petitioners requested on 9/27/06 **were overlapping** with Tips requested Declaratory Rulings. As stated previously the need for Tips Declaratory Ruling Requests and its primary jurisdictional referral from the IRS was to ensure that the shortfall issues would be resolved by the FCC if petitioners settled with AT&T on the telecom claims.

The exact same questions need to be answered by the FCC for Tips/IRS Declaratory Rulings as well as Petitioners Declaratory Rulings

A) The duration of the June 1994 grandfathered immunity period

and

B) the Shortfall Application illegal remedy method of imposing charges to end-users instead of the aggregators single master account.

How AT&T can actually say there is no overlap is simply unbelievable. Simply look at the Declaratory Rulings requested by petitioners' on 9/27/06 and compare these requests on the shortfall issues with the April 3rd 2007 IRS letter from the Taxpayer Advocate Service.
AT&T July 18th 2007 page 22:

> Tips' petition was a transparently **baseless** ploy to escape the consequences of Mr. Inga's litigation strategy before the District Court and inject these irrelevant issues into this proceeding.

AT&T asserts Tips petition on the shortfall impasse issues are **baseless** and **irrelevant;** however the evidence presented: A) the phone bills with taxes no paid on shortfall (exhibit NN in petitioner's 9/27/06 filing and B) the emails from the Furst Group (see page 56-66 in petitioners 6/29/07 filing) showing how AT&T buried shortfall charges in non disclosure agreements –was compensated for these charges but may have never paid taxes certainly are not baseless claims. In fact AT&T's own IRS auditor Mr Schwarmann did not refute Tips IRS claims against AT&T as he may also be well aware that AT&T may have beaten Uncle Sam out of tens of millions of tax dollars.

AT&T of course offers no evidence why the tax claims are baseless, AT&T simply believes that because it is AT&T the FCC has to listen to it. All of AT&T's pathetic excuses:
[1) Statute of limitations, [8]2) shortfall not taxable, 3) the Federal excise tax rule changed, etc]
All of these pathetic excuses that AT&T gave to the FCC to claim Tips tax claims were baseless were **thoroughly turned to mush** by Tips.

There is absolutely no way that the tax claims Tips filed were baseless. The tax claims may eventually be determined irrelevant; however Tips and AT&T will not know this unless the FCC determines that the shortfall charges---- which constitute the tax base ---should have never been applied in the first place. That is an "uncertainty" and a "controversy" for the FCC to decide.
AT&T July 18th page 22
AT&T comments on the one brief in which CCI submitted almost an identical brief:

> Mr. Inga **implies** that he had no involvement in preparing these comments, claiming that he noticed, after the fact, that CCI's comments repeated his arguments "word for word," but that he "**can not control it if the public sends in duplicate arguments**." Opp. at 69-70. It is telling, however, that CCI's president, Mr. Shipp, responded to AT&T's motion for sanctions but said nothing about how CCI came to submit word-for-word, typo-for-typo comments.

Yes, petitioners can not control what the public sends in. Petitioner's filed its brief and provided CCI and AT&T with its FCC server submitted comments at the same time. Of course petitioner's did not prepare CCI's comments since they were the same comments already prepared by petitioners. Petitioner's did not ask CCI to send in the same comments. In fact petitioners after petitioners saw the word for word CCI filing petitioners requested CCI not to do that again. Since the one verbatim filing--- months ago--- CCI has not filed any duplicate comments.

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[8] AT&T's position that that federal excise taxes are not due because of the date is false as AT&T's own previous exhibit demonstrated. Petitioners indeed have already addressed AT&T erroneous statement as to IRS statute of limitations on Federal Excise Taxes: Posted on the FCC Server 01/17/07

> AT&T's own exhibits on Jan 11th 2007 show on page 14 (2) of their exhibit that the FET still **applied prior to March 1, 2003** This section stressed that there will be no refunds from the IRS from FET prior to this March 1, 2003 date**. So AT&T's statement that the FET did not apply is obviously bogus.**

Regarding AT&T's comment:

> It is telling, however, that CCI's president, Mr. Shipp, responded to AT&T's motion for sanctions but said nothing about how CCI came to submit word-for-word, typo-for-typo comments.

Petitioners can not speak for CCI but obviously CCI believed that it was better to submit a copy of petitioners brief than to simply state that CCI agrees 100% with what petitioners filed. This is yet another non issue (which petitioners had no involvement with) that was already covered extensively by AT&T on 6/18 and answered by petitioners on June 29th that AT&T again submitted to make weight and delay the proceedings. Next thing you know AT&T will tell you that CCI's one verbatim filing----that was filed months ago---- that AT&T never commented on at the time----- is the reason why AT&T did not transfer the traffic 12 years ago. This trumped up sanction nonsense has become AT&T's pathetic defense.

AT&T page 22

> He argues, absurdly, that, because CCI's lengthy submission was wholly duplicative, "there was no need for the FCC or AT&T to read the comments." Opp. at 69. Of course, it was necessary to read the comments to determine that they were duplicative.

After reading the first page any idiot could see that there was an exact word for word submission by CCI replicating what petitioners filed. There is no one at the FCC that would need to read it again. It would take a minute to see that it was a replica.

Again none of this AT&T MAJOR ISSUE is attributable to petitioners. This is conduct of the "severest" form!!!! Just listen to AT&T trying to prove why the traffic should not transfer! Any judge would hit AT&T so fast with a Rule 11[9] for coming in and telling the Judge that another party's verbatim filing should lead to "**SANCTIONS OF THE *"SEVEREAST"* FORM!!!"** Absolutely incredible what AT&T has been allowed to get away with.

Just a "little" over the top wouldn't you say??? AT&T is very long on accusations and adjectives but awfully short on evidence, accurate facts and logic.

[9] SANCTIONS, RULE 11 - Federal Rule of Civil Procedure 11 provides that a District Court may sanction attorneys or parties who submit pleadings for an improper purpose or that contain frivolous arguments or arguments that have no evidentiary support. Rule 11.

AT&T July 18th Page 22-23

> In addition to these tactics, Mr. Inga has repeatedly changed his positions and arguments before the Commission. He initially claimed that "Judge Bassler's **far reaching statement** that he wanted resolved: 'any other issues left open,' *lead petitioners to believe* that petitioners would **not have to actually argue 'what is on the table,' to be argued**. Petitioners believed the FCC would only be concerned with the merits of each of the Declaratory Rulings filed." Pet'rs' Req. for Extension of Time to File Reply Comments at 1 (emphasis added and deleted). Two months later, Mr. Inga contradicted this claim of reliance on Judge Bassler's order, arguing that "whether or not Judge Bassler intended to have the other issues addressed is irrelevant." Further Comments of Pet'rs Regarding Recons. and Clarification of FCC Oct 12, 2007 [sic] Order at 25. Instead, Mr. Inga claimed that, in light of emails he received from the Commission's Acting General Counsel before Judge Bassler ruled, "[i]t did not matter what the scope of the future referral was to be," because his companies "would be permitted by the FCC 'to define' whatever Declaratory Rulings petitioners wished.

No change in position at all. It has always been petitioners position that Judge Basslers' referral—which AT&T above also agrees is far reaching –encompassed shortfall and discrimination issues. AT&T agreed also as it fully briefed these issues to the FCC. What petitioners understood from AT&T General Counsel Schlick was that when a Judge sends a referral it is automatically assumed that there are no disputed facts and the petitioner has standing on the issues. Thus petitioner's would not as stated in the excerpt "**have to actually argue 'what is on the table,' to be argued**".

If there is no primary jurisdiction referral then the FCC can still issue a Declaratory Ruling to "terminate a controversy or remove uncertainty" but the petitioner must prove it has standing and must show that the issues presented have no disputed facts.

So when petitioners explained it was irrelevant whether Judge Bassler's referral encompassed shortfall and discrimination issues it was simultaneously asserting that these issues----- that it was allowed to define---- must be decided by the FCC due to the fact that petitioners:

1) have standing
2) the issues have no disputed facts and
3) it will "terminate a controversy or remove uncertainty. The position is not all inconsistent nor is it a change in position.

You want to talk about changing positions? Where are the S&T obligations within 2.1.8 today AT&T? Just review petitioners 1/31/07 filing pages 66-69 for a clear indication of AT&T's changing positions as it scams its way through 12 years. Are the S&T obligations to transfer encompassed somewhere within the "phrase all obligations" or are they encompassed in the unexpired portion of minimum payment period? AT&T changed its position 4 times and none of its positions are correct.

The FCC can also see AT&T's changing scam defenses in petitioners Date Received/Adopted: 5/9/07 filing on pages 22-25 under:

How Many Obligations Were Transferred AT&T's Search for a Defense.

This doesn't even include AT&T Counsel Charles Fash who based upon the non explicit--- and thus unlawful language within 2.1.8---- took the position that section 3.3.1.Q bullet 4 was the way to transfer traffic. [10]

Petitioners have clearly documented multitudes of AT&T's changing defenses. All of which are total nonsense.

The trumped up nonsense keeps flowing: AT&T July 18th 2007 page 23

> This assertion is essentially an admission of gamesmanship—*i.e.*, that Mr. Inga believed he could try to avoid returning to the Commission by telling Judge Bassler there was **only one issue left for resolution** and then, if he lost, he could use the Schlick email in an effort to inject numerous other issues before the Commission.

AT&T makes no sense!! Judge Bassler was told there were other issues besides the "traffic only" transfer issue in 2004 before the DC Circuit ever ruled. Judge Bassler already knew that there were multiple issues. Where does AT&T come up with this nonsense that petitioners told Judge Bassler that there was only one issue left?

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[10] Charles Mr. Fashs' letter asserted (exhibit H of petitioner's 9/27/06 filing at pg 1 para 3) that 2.1.8 did not allow "traffic only" transfers. Mr Fash argued for the FCC's delete and add theory:

> The **Transfer of Service provision** of the tariff addresses the issue of transfer of service, **not transfer of "traffic"** by moving individual locations from one plan to another. The proper way to move "traffic" (i.e. a subset of locations on a plan) between plans is to submit service orders to delete the locations from one plan and add the locations to another.

AT&T just keeps making nonsense up to delay the resolution of the case. What is even further bizarre about AT&T‘s comment is that the 2004 filing to Judge Bassler asked to return to the Commission---not avoiding the Commission. Additionally Judge Bassler already knew about the email from Mr Schlick. The only gamesmanship going on here is AT&T’s con game on the FCC.

AT&T page 24 footnote 17:

> Mr. Inga claims he is a mere "novice[]" who, in light of Mr. Schlick's response to his inquiry, was "led to believe that Declaratory Ruling requests do not have to solely emanate from a District Court." Opp. at 74. But, at the time Mr. Inga received Mr. Schlick's July 2005 email, his companies were (and continue to be) represented by Mr. Arleo.

Petitioner’s counsel Mr Arleo also believed based upon the FCC’s General Counsel conversation with petitioners Mr Schlick’s on this procedural matter and the FCC 2003 Decision -- that any party who has standing can bring a request for Declaratory Ruling to the Commission as long as there are no disputed facts and it “terminates a controversy or removes uncertainty”—as obviously is the case here.

AT&T page 24 footnote 17:

> Less than three weeks before his companies filed their petition seeking to raise issues outside the Bassler referral, they were represented by Mr. Helein, a practitioner before the Commission. Mr. Inga's claims of unsophisticated ignorance are thus entirely hollow and cannot excuse his clear attempts to manipulate the Commission's processes.

Mr Helein also agreed with Mr Schlick’s FCC procedures--- that petitioners could introduce whether Declaratory Ruling it wished. Mr Helein pointed out to petitioners that the 1996 referred question from the Third Circuit –which originally emanated from Judge Politan in 1995 only was:

> whether section **2.1.8** [of AT&T’s Tariff FCC No. 2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction.

Mr Helein stated that the FCC then decided that AT&T used an illegal remedy when utilizing its fraudulent use provisions. Mr Helein explained that the referred FCC question did not need to explicitly refer to the FCC whether AT&T used an illegal remedy in utilizing its fraudulent use provisions but the FCC did resolve this to “terminate a controversy or remove uncertainty” due to the FCC’s broad discretion capability:

FCC 2003 Decision in petitioners 9/27/06 filing at exhibit B pg 11 para 15:

> The Commission has **broad discretion** under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to "terminate a controversy or remove uncertainty. 5 U.S.C. § 554(e); 47 C.F.R. § 1.2; *see also* 47 U.S.C. §§ 154(i), (j); *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C.Cir.), *cert denied*, 414 U.S. 914 (1973).

Petitioners were clearly believed: A) that the FCC would resolve referred and non referred issues based upon past history; B) the procedural comments made by the FCC's general counsel; and C) its own counsel that petitioners could define what it wanted resolved by the FCC.

AT&T page 24:

> Mr. Inga claims that the "discovery" of AT&T "concessions" from the mid-1990s that Judge Bassler never saw and Judge Bassler's supposed "misreading of the FCC 2003 Decision" make it "appropriate" to return to the District Court to modify the referral order "**to make it explicit that all issues are to be resolved." Opp. at 8-9;** *see also id.* at 30. This claim is doubly disingenuous. First, AT&T's supposed "**concessions" pertain to the "all obligations" issue**, as does Judge Bassler's supposed "misreading" of the Commission's decision *(i.e.,* his alleged failure to appreciate that the Commission had somehow decided which obligations must be assumed in traffic-only transfers, even though it expressly said that § 2.1.8 did not govern such transfers). Because they pertain to the "all obligations" issue, these arguments obviously provide no reason to seek an expansion of the referral to include the shortfall infliction and discrimination claims.

AT&T asserts above that petitioners only asserted there were AT&T **concessions** regarding just the "traffic only" transfer issue and not the June 17th 1994 shortfall charges grandfathered immunity provision. However on the same page 8 of petitioner's June 29th 2007 filing petitioners clearly stated:

> The fact that AT&T finally **conceded** in its Dec 20th 2006 filing that the plans were pre June 17th 1994 grandfathered through at least June of 1996 coupled with the fact that the FCC made AT&T on Oct 23rd 1995 extend the grandfather provision till Oct 1996 made the June 1996 infliction an easy decision for the District Court to decide---**it is all contractual-no interpretation.**

As the FCC can see above ---petitioners clearly explained that the concessions were not limited to section 2.1.8.

AT&T's above short quote and spin was from the following petitioner 6/29/07 FCC filing on

page 9:

> Thus given the fact that there has been so many explicit AT&T **concessions** discovered **while the parties have been before the FCC,** and a clear misreading of the FCC 2003 Decision by Judge Bassler, it was more than appropriate for petitioners to inform new District Court Judge Wigenton **of all these findings** since petitioners initial 9/27/06 filing, and ask to modify Judge Bassler's referral to make it explicit that all issues are to be resolved--- and stay at the FCC not "forum shop."

Petitioners clearly did not say the AT&T concessions were concessions involving only AT&T's counsels positions that S&T obligations do not transfer. Petitioner's were referring to concessions involving both the "traffic only" transfer issue and the June 1996 shortfall issues, and the discrimination issues.

In fact in the above statement petitioners explained that the concessions have occurred "**while the parties have been before the FCC"** which was referencing the Dec 20th 2006 AT&T brief in which it conceded petitioners plans were still pre June 17th 1994 immune from shortfall charges. Additionally the evidence discovered by petitioner's from 1995 and 1996 covered the "traffic only" transfer issue, the June 1996 shortfall infliction and the discrimination issues—not just the "traffic only" transfer issue.

Therefore AT&T's assertion that the concessions petitioners referenced were only related to the "traffic only" transfer claims is absolutely false and AT&T knows it. AT&T again intentionally short quoted and spun petitioner's comments.

AT&T page 25:

> Second, neither claim makes it at all "appropriate" to suspend proceedings before the Commission to return to the District Court. To the contrary, it is ludicrous to argue that, because Judge Bassler allegedly misinterpreted a decision *by the Commission*, the appropriate course of action is to ask a new judge to determine what the Commission meant ***rather than allow the Commission to interpret its own decision.***

The FCC's position is to interpret the tariff and the FCC's 2003 decision correctly interpreted which obligations transfer on a "traffic only" transfer, agreeing with Judge Politan's obligation allocation in the First non vacated Politan Decision (May 1995). Exhibit Reply A in petitioner's 1/31/07 filing)

The Court must interpret the FCC's decision. In this case because the FCC used section 3.3.1.Q bullet 4 to determine how "traffic only" could move but used section 2.1.8 to determine which obligations transfer the Court was confused and made a simple but critical error.

Judge Bassler made a critical error when stating in Judge Bassler's 6/1/06 Decision Footnote 5:

> Plaintiffs argue that the FCC already addressed whether shortfall and termination obligations were to be assumed by PSE. Pls. Mem. at 11-12. **The FCC *"only"* discussed shortfall and termination charges in the context of the fraudulent use provision, § 2.2.4, in Tariff No. 2.**

Petitioners have extensively commented where Judge Bassler erred in reading the FCC's 2003 Decision. (See petitioners extensive comments at its 5/9/07 filing Pages 47-53 showing the FCC 2003 decision obligation analysis and the FCC's position to the DC Circuit) AT&T did not and can not refute -the FCC's extensive obligations analysis was in fact **under the heading 2.1.8**. See FCC Decision exhibit B in petitioners 9/27/06 filing at page 7 line 10.

Additionally, it was shown by petitioners—and also not refuted by AT&T--- that the FCC agreed with the non **vacated** District Court Judge Politan Decision which utilized section 2.1.8 to interpret allocation of obligations.

Going back to new Judge Wigenton and showing her the simple but critical mistake that Judge Bassler made is not a job that needs "tariff interpretation" by the Court. Anyone can clearly see the clear error Judge Bassler made of not reading the heading correctly.

Additionally the FCC does not need to "interpret" its own decision again. The FCC can also plainly see where Judge Bassler made a critical error. The FCC didn't need to interpret which obligations transfer on a "traffic only" transfer under section 2.1.8 again as it has already correctly done so in 2003.

The FCC fully understands that its obligation analysis was done and placed under the heading 2.1.8 in its 2003 decision and not solely the Fraudulent Use heading that Judge Bassler's decision erroneously indicated. AT&T's assertion that the FCC has to interpret its decision is comical.

The FCC already told the DC Circuit what its 2003 decision indicated in reference to which

obligations transfer on a "traffic only" transfer. See exhibit T of petitioner's 9/27/06 filing which is page 19 and 20 of the FCC's brief to the DC Circuit explaining its 2003 Decision.

AT&T has asserted that the FCC's rehashing of its arguments made to the DC Circuit explaining its 2003 Decision that S&T obligations stay with the transferors' CSTPII/RVPP plan under 2.1.8 are not worth the paper their written on. AT&T relies upon SEC v. Chenery, 332 U.S. 194 (1947) and AT&T Corp. v. FCC, 236 F.3d 729 (D.C. Cir. 2001); however AT&T's reliance is totally misplaced. Those decisions stand for the proposition that an appellate counsel's post hoc interpretation/rationalization for agency action cannot be relied upon **if it is *not* contained in the original order.** In other words, a party cannot add new interpretations for a decision if that interpretation was not **already advanced** in its 2003 Decision. In its DC Circuit brief, the FCC clearly interpreted the obligations language of 2.1.8 as it pertained to a "traffic only" transfer **which it had also clearly interpreted under the heading 2.1.8 in its 2003 Decision**. Thus, the FCC's interpretation/rationale to the DC Circuit in reference to its 2003 Decision was consistent with its 2003 Decision on which obligations transfer on a traffic only transfer----despite what AT&T states the FCC's brief to the DC Circuit was not worthless.

Petitioners have already provided concessions from AT&T's counsel Mr Meade and Mr Carpenter in which both AT&T counsel conceded that the FCC informed AT&T in 1995 during AT&T's Substantial Cause Pleading that S&T obligations do not transfer on "traffic only" transfers. The FCC interpreted 2.1.8's obligation transfer section in 1995 and 2003 and further explained it to the DC Circuit and the DC Circuit did not change the FCC's correct position.

Given the fact that the DC Circuit did not change the FCC's decision in regards to which obligations transfer the FCC's Decision stands as the Law of the Case[11] extensively covered in petitioners 1/31/07 filing page 120. AT&T does not refute that the FCC can not change its

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[11] The Law of the Case designates that if an appellate court has not decided a legal question and case goes to a lower court for further proceedings**, the legal question, not determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain the same.** *Allen v. Michigan Bell Tel. Co.*, 232 N.W.2d 302, 303. The Law of The Case also provides that an appellate court's determination on a legal issue is binding on both the trial court and FCC **and an appellate court on a subsequent appeal** given the same case and substantially the same facts. *Hinds v. McNair*, 413 N.E.2d 586, 607.

position given the same set of facts as are here.

If Judge Wigenton would have allowed petitioner's to brief her Court, Judge Wigenton would have easily recognized Judge Bassler's error and recognized the FCC has already interpreted which obligations transfer under section 2.1.8.---but Judge Wigenton denied petitioner's request to brief her Court.

The bottom line is that AT&T's assertion that the Court could not interpret the FCC's 2003 Decision is absurd, especially given the plethora of new concessions from AT&T counsel---- that S&T obligations do not transfer on "traffic only" transfers---which Judge Bassler never had.

AT&T page 25 footnote 18:

> As AT&T has explained in numerous prior submissions, Mr. Inga's "concessions" consist of distortions of statements that, placed in their proper context, are entirely consistent with AT&T's interpretation of § 2.1.8. **AT&T will not rehash that showing here.**

There has been no distortion of statements. All the concessions from AT&T's counsels (Whitmer, Meade, Friedman, Fash, Barillari, Brown and Carpenter and employee Carl Williams all explicitly state that S&T obligations do **not** transfer on a "traffic only" transfer . All these AT&T's counsels and employees concessions are **inconsistent** with AT&T's new position that S&T obligations do transfer on a traffic only transfer. Carl Williams certification is exhibit A in petitioners FCC filing Date Received/Adopted: 05/22/07. Exhibit B in petitioners FCC filing Date Received/Adopted**:** 05/22/07 shows Mr Williams explaining AT&T's deposit requirements are in reference to the revenue commitment which would stay with CCI. Exhibit C in petitioners FCC filing Date Received/Adopted: 05/22/07 is Mr Williams testifying that AT&T counsel helped Mr Williams write his November 29th 1995 certification confirming deposit requirements are the obligation of the transferor which keeps the revenue commitment.

AT&T argued to the Third Circuit page 33 para 2 based upon Mr Williams certification:

> In fact, AT&T is not merely at risk for non payment of the usage charges themselves, **which are indeed paid by end users directly to AT&T,** but also for plaintiffs' **shortfall and termination charges, which can only be paid by plaintiffs** from the revenues they would lose as a result of the transfer. Williams 2d Supp. Cert. ¶ 5 (AA 1261).

Correct the shortfall and termination charges must stay on the CSTPII plan.

AT&T's Defenses have been so Pathetic that AT&T simply Chooses Not to "*Rehash*" them.

No rehash huh? We also saw AT&T decide not to explain itself in its May 1st 2007 filing on page 1:

> AT&T does not wish to burden the Commission with a detailed refutation of all of the "concessions"

AT&T simply can't address its comical defenses and its concessions because it only serves to evidence to the FCC the scam AT&T counsel have burdened the Commission with.

Here are just a few of AT&T's ridiculous cover-up defenses for several AT&T counsels who all conceded that S&T obligations remained on CCI plans under the tariff and do not transfer to PSE:

A) what AT&T counsel were referring to as obligations remaining on CCI's plans and not transferring was what was being "proposed" by petitioner's and not what tariff meant. All the Judges and the FCC simply disregarded evaluating the transaction under the tariff.

Petitioners have previously evidenced comments from the president of the Telecom Resellers Association Charlie Hunter—representing hundreds of aggregators--who explained in his petition to reject or suspend Tr 8179 that all "traffic only" transfers that were ever done by AT&T never required S&T obligations to transfer on "traffic only" transfers. Petitioner's order was no different than what AT&T allowed every other customer.

See petitioners FCC filing Date Received/Adopted 05/09/07at page 57 quoting petitioners exhibit R in in petitioners 9/27/06 filing:

> Charlie Hunter page 9-10
>
> And AT&T's **lame contention that its current requirement that the transferee of a term plan must "agree to assume all obligations of the former Customer"** could be read expansively to require the transferee of individual "800" numbers or locations to **assume full term plan obligations is disingenuous and almost laughable**. **Not only has AT&T *never interpreted its tariff in this***

> ***manner*****,** but if this were a legitimate reading of current tariff requirements, the transfer to another IXC of a single "800" which had been associated with a term plan would trigger the assumption by that carrier of all term and volume commitments associated with the term plan. **Obviously, this is a painfully absurd result that was neither intended nor can be read into the current tariff language.**

B) **AT&T's Joint and Several Liability Cover-up of AT&T's Counsel Concessions that S&T Obligations do not Transfer on "traffic only" Transfers:**

AT&T asserts that all of its counsel's concessions that revenue commitments and their associated S&T obligations remain on the transferor's plan were actually referring to joint and several liability obligations remaining on the transferors plan.

Here is AT&T's pathetic cover-up:

AT&T Dec 20th page 29:

> Moreover, as AT&T has explained, a valid or permissible **traffic transfer** under § 2.1.8 would not have extinguished the transferor's liabilities; rather, the joint and several liability requirement meant that both the transferor and transferee were responsible for the transferor's obligations. **Accordingly, any AT&T statement that a transferor remained liable for such obligations after the transfer was in no sense a "concession" that shortfall and termination obligations did not transfer.** FOOTNOTE HERE
>
> FOOTNOTE:
>
> See Petn. at 18 (Fash "concession" that traffic transfer would leave transferor with no assets "to pay tariffed charges associated with the plan").

None of AT&T counsels concessions could have possibly been referring to Joint and Several liability obligations remaining with the transferor on a "traffic only" transfer because the "remaining jointly and severally liable provision" provision in Jan 1995's version of 2.1.8 explicitly did **not** pertain to revenue commitments/S&T obligations.

The "remaining jointly and severally liable provision" in the Jan 1995 version of 2.1.8 **only** pertained at para 2.1.8(c) to:

(1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable

minimum payment period(s). The "remaining jointly and severally liable" provision did not pertain to revenue commitments and its associated S&T obligations.

The FCC's explained to AT&T in 1995 when AT&T lost its Substantive Cause Pleading that revenue commitments/S&T obligations are not included within the **unexpired portion of any applicable minimum payment period(s):**

See petitioners exhibit M filed 9/27/06 marked on the bottom of the page as JA 117 which are the Commissions FOIA notes.

> Secondly, the language now talks about assuming obligations and says these obs include (but does not say "but not limited to") out indebted of serv and unexpired portion of min pay period(s). It says nothing about tp or CT oble and Tariff 2 refs to min pay period talk about min payment period is 1 day for WATS (which includes cl 800) and for all other 800 services it would seem- 6.2.A. and 2.5.5. And charges applicable for min payment period includes recurring charge(s), nonrecurring charge(s) and/or special construction charge(s). Moreover, in proposed revisions, ATT seems to leave this out of the item 5 location whereas they have it in both 2 and 5 for Tariff 1 already giving some credence to the **fact they see this as something new and additional**. Moreover, the unexpired portion of any applicable min pay period **would not seemingly include unexpired portion of any term of service and usage or rev commit but has its own unique meaning and, therefore, the provision about the term plan and commitments being included as part of the min pay period is conflicting** and we find in favor of customers in cases of conflicts.

AT&T knew that the revenue commitment/S&T obligations were not included within section 2.1.8(c) in Jan 1995 and thus were not subjected to the "remaining jointly and severally liable" provision----- AT&T added the revenue commitment/S&T obligations as a prospective change in November 1995 at section 2.1.8(E) to be subjected to the "remaining jointly and severally liable" provision.

The bottom of Exhibit P and the top of exhibit AA in petitioner's 9/27/06 filing is the November 1995 section 2.1.8(E) prospective tariff change language. For the FCC's convenience here it is and petitioners have bolded and underlined the additional obligations prospectively added by AT&T in November 1995 that were not in the Jan 1995 version of 2.1.8:

> E. The Current Customer remains jointly and severally liable with the New Customer for any obligations existing as of the Effective Date of the transfer, except as provided in 1., following. These obligations include, for example, all outstanding indebtedness for the service, the unexpired portion of any applicable

> minimum payment period(s), **the unexpired portion of any term of service and usage and/or revenue commitment(s), and any applicable shortfall or termination liabilitiy(ies)**

AT&T's joint and several liability bogus defense also had additional major holes. By AT&T asserting that what its counsels were referring to as the obligations remaining with CCI were joint and several liability obligations -----if this were true that meant by definition that the obligations were transferred to the transferee and counsel Fash would not have been concerned with shortfall obligations.

In the Mr. Fash July 7, 1995 letter, that neither the FCC nor the DC Circuit has seen, AT&T counsel Charles Fash wrote to petitioners' counsel regarding a competitor aggregator, Darren B Swain (DBA US Communications), which was attempting to transfer "traffic only" under 2.1.8 to one of Petitioners' CSTPII plans.

Mr. Fash writes in reference to 2.1.8 transfers at Exhibit U in petitioners 9/27/06 FCC filing:

> It appears to AT&T at this juncture that transfer of all but two of the locations as requested by Mr. Swain would render not only the plan, but Darren B. Swain, Inc., an empty shell devoid of assets with which to pay tariffed charges "associated with the plan".

First of all: The date of the Mr. Fash letter is July 7th 1995 which is 5 months prior to the November 1995 2.1.8 tariff revision which added revenue commitments/S&T obligations to be subjected to the "remaining jointly and severally liable" provision; so Mr Fash could not have possibly been referring in his July 7th 1995 letter to the November 1995 prospective tariff change.

Secondly: If Mr Fash actually believed that the transferor (Swain) would have Joint and Several liability responsibility and the transfer**ee** petitioners would assume the primary responsibility for the revenue commitment/S&T obligation on the "traffic only" transfer the Mr Fash letter would make no sense. Because Mr. Fash understood that petitioners would be the primarily responsible and had "pre June 17th 1994 grandfathered S&T immune plans and therefore there would be no Fash issue.

It is obvious that Mr Fash clearly conceded that the revenue commitment/S&T obligation must stay with the "traffic only" transferors CSTPII/RVPP plan as per 3/3/1/Q bullet 10. AT&T's

broad stroke pathetic attempt to cover for all its counsels concessions that stated S&T obligations stay with the "traffic only" transferors plan is also contrary to its own position in 1995:
AT&T had also conceded to the FCC in its 2003 Comments that under section 2.1.8(c) the joint and several liability provision did not pertain to revenue commitments/S&T obligations transferring; see exhibited at Z in petitioner's 9/27/06 filing AT&T's position to the FCC in 2003 comments.[12]

More Joint and several liability Defense that petitioners proved as nonsense:
In AT&T's 6/12/07 filing AT&T attempted another pathetic cover up for Mr Whitmer's statement that the Inga companies would remain jointly and severally liable for S&T obligations after the "traffic only" transfer from CCI to PSE. AT&T bogusly asserted this Mr Whitmer's position was consistent with AT&T's position that S&T obligations transfer on "traffic only" transfers but petitioners of course proved Whitmer's position was inconsistent with AT&T's new position that S&T obligations transfer:

AT&T on page 19 of its 6/12/07 filing stated:

> Like so many of his arguments in this proceeding, Mr. Inga's "concession" claims are utterly baseless. In one of his most recent emails to the Ms. Shetler, for example, Mr. Inga provides the following excerpt from a 1995 hearing before Judge Politan.
>
> Whitmer: Mr. Inga, you know, do you not, that if the service, except for the home account—or Mr. Yeskoo called it the "lead account"—is transferred to PSE, the **shortfall and termination liabilities remain with Winback & Conserve,** isn't that correct?

None of the concessions provided by petitioners have been baseless. All concessions attributed to AT&T counsel have been clear and accordance with the tariff. Petitioner's extensively explained on pages 88-94 of its 6/29/07 filing why under section 2.1.8 Mr Whitmer's statement that the Inga companies remained jointly and severally liable with CCI was indeed a concession that

[12] "Moreover, as AT&T's customers for all of the locations and all of the traffic generated "under the tariffed" plans, in terms of the transfer of such accounts the Petitioners would, **"but for"** the attempt to bifurcate the traffic from the underlying plans, remain jointly and severally liable with the new customer for all obligations existent at the time of the transfer."
AT&T is simply arguing above that PSE would be liable and petitioners jointly and severally liable for the S&T obligations with petitioners **if** the plan was transferred **BUT** instead petitioners transferred just "traffic only". Yet another concession that S&T obligations do no transfer on "traffic only" transfer.

S&T obligations do not transfer to PSE.

Of course AT&T did not even respond to petitioners 6/29/07 filing within AT&T 7/18/07 filing regarding AT&T's 6/12/07 pathetic attempt to cover for Counsel Mr. Whitmer, because there simply was no way that AT&T could cover it up.

C) Then you have AT&T's creation of the infamous "de minimis transfer provision of 2.1.8----- that no one but AT&T can find in 2.1.8----- which according to AT&T does **not** mandate S&T obligations transferring on just a few accounts, but mandates it on more than a few accounts. This was the pathetic and quite comical cover-up for AT&T counsel Mr Carpenters statements to the DC Circuit found as exhibit W in petitioners 9/27/06 filing [13]

AT&T's de minimis scam assertion that **section 2.1.8** allowed a couple of accounts to transfer without transferring S&T obligations conflicted with AT&T's position on page 29 of its Dec 20th 2006 filing in which AT&T clearly stated that AT&T's whole minimis transfer scam "**fell outside the scope of § 2.1.8 altogether**:"

> Petitioners also quote statements AT&T's counsel made during oral argument to the D.C. Circuit. Petn. at 18-19. But in the passage they quote, Mr. Carpenter simply recognized that truly de minimis traffic transfers **fell outside the scope of § 2.1.8 altogether**. See Exh. W (AT&T "would not take the position, then, that any shortfall obligation went with the transfer of a single number").

Therefore AT&T couldn't have possibly been speaking about its bogus de minimis transfer scam being the cover for its counsel Mr Carpenter's concession that S&T obligations do not transfer on "traffic only" transfers under 2.1.8; as AT&T itself stated the bogus de minimis transfer exception **fell outside the scope of § 2.1.8 altogether.**

D) AT&T's assertion that PSE simply refused to accept S&T obligations. This one was rib hurting comedy in that AT&T simultaneously stated that under its "proposal" defense that petitioner's proposal was **not** to transfer the S&T obligations to PSE. This left AT&T in a

[13] Mr. Carpenter: Yes, but what it means to assume all the obligations. What obligations apply may vary depending on what's transferred.
Mr. Carpenter: Now what obligations they are going to end up assuming will vary depending on what service is being transferred.

position in which the AT&T con artists state that PSE refused to assume S&T obligations which AT&T simultaneously asserts that it was never proposed to PSE to assume the S&T obligations in the first place!!! Furthermore the PSE submission explicitly advises AT&T to do a PROPER transfer ---not to modify what the tariff calls for. (exhibit F in petitioners 9/27/06 filing)

E) AT&T was never able to cover-up for Mr Carpenter's concessions to the Third Circuit.[14]
AT&T just explained to the FCC that the defense it asserted to the Third Circuit was abandoned -----it was a little too far fetched for even AT&T to believe.
AT&T's scam to the Third Circuit was to correctly assert that S&T obligations only transfer on plan transfers not "traffic only" transfers ---but bogusly assert to the Third Circuit that petitioner's transfer was a **plan transfer** and not a "traffic only" transfer----- because AT&T clearly understood that the only way S&T obligations transfer was on an entire plan transfer.

[14] David Carpenter supporting petitioners during Third Circuit Oral Argument:
We point out in our brief that there's a distinction between transfers of entire plans, and transfers of individual end-users locations. That when the "**plan"** is transferred, "**all the obligations**" have to go along with it. (exhibit V in petitioners 9/27/06 filing Pg 15 line 9)
See Carpenter again at exhibit V. in petitioners 9/27/06 filing Pg 15 line 23…
When you're transferring **all** the traffic, you're transferring the **plan**. That is –and the obligations have to go with it, shortfall and termination liability. (emphasis added)

AT&T did state to the FCC that it gave up that bogus defense after the Third Circuit but petitioners evidenced AT&T using it again in AT&T's 1996 FCC Joint Petition Comments[15].

AT&T gave its creative revisionist history lesson in its 6/12/07 filing and described the festivities in the Third Circuit as "skirmishes." Petitioner's 6/29/07 filing explained why AT&T avoided its history lesson before the Third Circuit. Does AT&T's 7/18/07 filing refute or even mention petitioner's 6/29/07 assessment of AT&T's skirmish lesson in which it conceded S&T do not transfer? The AT&T con artists just want the FCC to forget about it.
Fortunately for the FCC we will help the FCC recall AT&T's concessions:

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[15] AT&T's same bogus assertion can also be seen in AT&T's August 26th 1996 filing to the FCC at page 10 para 2 (See petitioners FCC filing **Date Received/Adopted:** *05/09/07* at exhibit J)

> CCI ostensibly sought to transfer the traffic---but not the "plans" themselves---- to PSE under section 2.1.8 of AT&T's Tariff F.C.C. No. 2. Section 2.1.8B states that a Customer may transfer its WATS service **(*"in this case"* the relevant WATS services are the CSTPII *"Plans")*** to a "new Customer" only if the new customer confirms in writing that it "agrees to assume all obligations of the former Customer at the time of transfer or assignment.

AT&T misrepresented petitioner's "traffic only" transfer as a **plan transfer** as it states: "***in this case"* the relevant WATS services are the CSTPII *Plans."*** Obviously in this case it is a "traffic only" transfer---not a **PLAN** transfer.

Petitioners have also provided evidence of AT&T 1996 misrepresentations to the FCC regarding AT&T's bogus assertion that petitioners did a plan transfer: See within petitioner's April 23rd 2007 FCC filing exhibits B: "**all** the traffic"; and exhibit C: "AT&T objected on the grounds that section 2.1.8 did not authorize the transfer of a ***"plan"*** unless the transferee, **in this case**, assumes the original customer's liability"

AT&T did the misrepresentation because there is a distinction between a plan transfer and a "traffic only" transfer ---due to the obligations that are transferred---as its counsel Mr. Carpenter conceded to the Third Circuit and DC Circuit.
See exhibit V in petitioners 9/27/06 filing Pg 15 line 9:

> We point out in our brief that there's a ***distinction*** between transfers of entire plans, and transfers of individual end-users locations. That when the "**plan"** is transferred, **"all the obligations"** have to go along with it.

See Mr. Carpenter again at exhibit V. in petitioners 9/27/06 filing Pg 15 line 23:

> When you're transferring **all the traffic,** you're transferring the **plan**. That is – and the obligations have to go with it, shortfall and termination liability.

AT&T counsel Mr Brown's defense was part of the Third Circuit festivities put on by AT&T. Mr Brown conceded that it was self evident under the tariff that S&T obligations do not transfer when location**s** (plural) transfer but Mr. Brown simply lied and stated petitioners did a plan transfer not a "traffic only" transfer. Mr Brown's scam:

AT&T reply brief to the Third Circuit 1996 Page 17 para 2: Previously submitted to FCC as exhibit D in petitioners FCC filing April 23rd 2007.

> CCI notes that a transfer of service can apply either to individual end user location**S** or to entire plans. See CCI Br. at 31-32 & n.13. CCI then, incongruously, seeks to defend the District Court by citing "**record evidence"** that addressed transfers of (**not entire plan's liabilities**), and showed that the only "obligation" transferred to the "new customer" in **that event** is the unpaid liability associated with the individual end user location that is transferred. **But that is self-evident under the tariff**. ***By contrast,*** when "all" the plan's traffic and locations are being transferred to a new customer and when the "plan" would then exist only as an "empty shell", then the "new customer" would not be assuming "all" the associated "obligations" unless it assumed the "**existing customer's" shortfall and termination commitments**.

Despite stating to the Third Circuit in 1996 that there is a **contrast**--- between a plan transfer vs. a "traffic only" transfer with respect to which obligations transfer------ AT&T's bogus position today is that there is **no contrast**—all obligations must transfer. AT&T of course made this Third Circuit concession prior to knowing that the case focus was going to change to which obligations transfer. Of course Mr Whitmer, Mr Meade, Mr Friedman, and Mr Carpenter all made their concessions prior to the DC Circuit ruling also; so they were not aware of the scam AT&T would eventually need to make to scam the FCC today.

AT&T never did come up with a cover-up for its counsel Richard Meads concession to Judge Politan at paragraph 15 of his November 1995 certification (exhibit N in petitioners 9/27/06 FCC filing). AT&T counsel Mr. Whitmer and Mr Barillari agreed with fellow AT&T counsel Meade's tariff analysis during oral argument in March 1996 ---that S&T obligations do not transfer as Meade explained that this was the problem that AT&T had with 2.1.8. When its next to impossible to come up with a good scam defense AT&T's tactic has always been to ignore it and hope the FCC and Courts do not remember it.

According to AT&T each one of AT&T's pathetic defenses (there must be 100 concessions from 7 different AT&T counsel) have all been taken out of context—but AT&T can't explain the context itself under the tariff. It makes things up like de minimis transfers are allowed under the tariff!!!

We are not talking just one or two concessions here but 7 different AT&T counsel with 100 concessions to multiple Courts and the FCC and AT&T attempts with one sentence to state that they were all taken out of context. Absolutely scam.

AT&T can't come up with a sensible defense after 12 years let alone the fact that 2.1.8 has a 15 day statute of limitations provision to raise a defense. Even its scam defenses conflict! AT&T can't even create a scam that makes sense. .

So when AT&T tells the FCC that it does not wish to **"rehash"** its defense in a **permit** but disclose proceeding, the FCC can clearly understand why AT&T doesn't wish to rehash. All of AT&T's so called defenses have been totally destroyed by petitioners as petitioners have proven AT&T's defenses for the scams that they are.

Continuation of page 25 footnote 18:

> But the "concession" Mr. Inga claims AT&T has failed to address," see Opp. at 34, is illustrative of his tactics. He cites a 2002 document stating that AT&T's transfer form "may require" a transferee to assume all of the transferor's obligations. See Exh. J to Pet. for a Declaratory Ruling. But the transfer forms in effect in 1995, when Mr. Inga proposed his traffic-only transfer, explicitly tracked the language of § 2.1.8 at that time, and stated that the New Customer "hereby assumes all obligations" of the old customer, see Exh. H to Pet. for a Declaratory Ruling (emphasis added), which is why Mr. Inga sought to modify the form by hand. In all events, because it is the language of the tariff at the relevant time that controls, if any of AT&T's statements were inconsistent with that language—and they are not—such statements would be legally irrelevant.

So AT&T actually wants the FCC to believe that in Jan 1995 that section 2.1.8 mandated that S&T obligations transferred but then AT&T changed its tariff in June 2002 (exhibit J in petitioners 9/27/06 filing) **to no longer mandate that S&T obligations must transfer.** Add this to another one of AT&T's scam defenses. Absolutely Ridiculous!

AT&T obviously took a good look at its section 2.1.8 in May 1996 and clarified it in June 2002 that S&T obligations were not a must to transfer and changed its tariff. If there was an actual change in requirements to no longer mandate that S&T obligations must transfer then AT&T would be able to produce extensive documentation sent to its sales force educating the sales force that we use to mandate S&T obligations transferring on "traffic only" transfers under 2.1.8 but now we no longer mandate such under 2.1.8. AT&T can not produce any such documentation, because none exists.

AT&T also believes that it can simply argue that the revised section 2.1.8's in November 1995 and May 1996 and June 2002 are "legally irrelevant" and can not help the FCC to interpret section 2.1.8 in effect in Jan 1995---this is not so due to Title 47 Tariff Symbol Coding.

The FCC has already heard this same AT&T's assertion in its Dec 20th 2006 filing that revised section 2.1.8's are not controlling; however petitioners explained in its 1/31/07 FCC filing how using the coding symbols the revised section 2.1.8's could help the FCC interpret previous versions of section 2.1.8. AT&T never refuted petitioners correct statements.
Petitioner's extensively explained in its 1/31/07 filing on page 105-111 under:

AT&T Tries To Repair 2.1.8E Tariff Evidence Which Shows
S&T Obligations DO Not Transfer On Traffic Only Transfers

that the FCC can use the tariff coding system shown as exhibit REPLY D on page 166 of petitioners 1/31/07 entitled **Title 47: Telecommunications** ----which is the Explanation of Symbols mandated to be used when language changes are made to tariffs. Petitioner's also explained the tariff coding system in its 9/27/06 filing and provided exhibit Q as well.

Section 2.1.8(E) (exhibit AA in petitioners 9/27/06 filing) does **not** show that there was a tariff change in the Nov.1995 section 2.1.8 version from the Jan 1995 section 2.1.8 version---as to the duration of time in which the old customer remains jointly and severally liable language for transferred S&T obligations.

A letter "C" would be used to designate a change in the tariff. What changed in future versions of section 2.1.8 after Jan 1995 was the length of time the former customer would be jointly and

severally liable for S&T obligations once a plan transferred. However, **there was never a change** in the fundamental 2.1.8 rule that the duration in which a former customer must remain jointly and severally liable for S&T obligations only pertained to **plan transfers**.

Section 2.1.8(E) does not address the duration in which a former customer must remain jointly and severally liable for S&T obligations on a "TRAFFIC ONLY" transfer ------because S&T obligations of course do not transfer at all on a "traffic only" transfer.
Since section 2.1.8(E) was **not** a change from Jan 1995 to November 1995 with respect to the fact that the duration of remaining jointly and severally liable only applies to PLAN transfers the FCC can indeed utilize the November 1995 version of 2.1.8 or the May 1996 version of 2.1.8 as **it must by law** be the same tariff interpretation as per the joint and several liability provision as the Jan 1995 version of 2.1.8. Section 2.1.8(E) in November 1995 conclusively establishes that S&T obligations do not transfer on "traffic only" transfers in Jan 1995 as per Title 47. By law, revised 2.1.8's are absolutely relevant to interpreting previous versions of 2.1.8.

Conspicuously absent from all of AT&T's nonsensical filings is a response to petitioners comments made regarding the detailed analysis of AT&T's May 1996 section 2.1.8 which shows the "all obligations" language in it **but explicitly states that the transferor plans keep its revenue commitment and associated S&T obligations on a "traffic only" transfer.** This is totally in contrast to AT&T's bogus 2.1.8 interpretation that it now asserts. See petitioners 1/31/07 filing on Page 115 paragraph 294 through page 119 to fully understand why AT&T's "all obligations" argument is bogus.

AT&T can't argue that May 1996 is not controlling because Title 47 tariff coding symbols tell us that 2.1.8 "all obligations theory" is consistent with the November 1995 and Jan 1995 section 2.1.8 interpretation that "all obligations" pertain to what is transferred. AT&T's theory--- which it can not show evidence of despite claiming it has done thousands of traffic only transfers ---is positively false and petitioners and the FCC's 1995 and 2003 analysis that obligations transferred pertain only to what is transferred is absolutely correct.

Petitioner's also must correct AT&T for what must be the 10th time regarding who made the notations on the AT&T Transfer of Service (TSA) forms and why they were made. AT&T states:

which is why Mr. Inga sought to modify the form by hand.

AT&T's 1996 brief to the FCC stated that **CCI made the notations on the TSA form** and this is true, CCI made the notations --Mr Inga did not make the notations on the form.

Then in AT&T's May 22, 2006 AT&T Reply Brf., to the District Court at p. 10. footnote 4 AT&T asserts that PSE wrote "traffic only" on the AT&T transfer form. In its reply brief, AT&T states:

> As AT&T has previously explained, **PSE "wrote' traffic only'** on the transfer forms to make clear that it was not accepting the plans and the associated obligations for shortfall and termination changes."

PSE did not write the notations on the TSA. The above AT&T scam was done because AT&T believed that it was better to assert that PSE did not want S&T obligations.

Now the AT&T con artists again change its story for the 3rd time and state:

> which is why Mr. Inga sought to modify the form by hand.

Mr Shipp (CCI's president) additionally certified (exhibit E in petitioners 9/27/06 filing) that the reason why he made the mandatory notations was to explain that what petitioners were ordering was a "traffic only" transfer not a plan transfer; as the TSA allowed for different types of transfers—as the DC Circuit correctly decided.

It was necessary to inform AT&T which type of transfer was being ordered because 2.1.8 allowed "traffic only" and plan transfers.

Petitioners 5/9/07 filing at exhibit D is petitioners 2003 statement to the FCC:

> AT&T's Transfer or Assignment (TSA) form was used for multiple purposes." Therefore **instructional notations to tell AT&T what type transfer was being ordered was** mandatory.

See the cover page and each of the nine AT&T Transfer of Service Forms (TSA's) which are verbatim section 2.1.8 which show that the only two obligations listed within section 2.1.8 were agreed for transfer by the parties; see exhibit F pgs. 4-13 of petitioners 9/27/06 brief.

For example see the first TSA page 5 of exhibit F which has hand written notes. It states:

> Traffic only keep plan in tact. Move all BTN's except 1810000018133

AT&T came up with a real doozie 10 years after the "traffic only" transfer as the AT&T con artists short quoted the actual notations down to "traffic only" then stated that "traffic only" meant transfer the traffic but don't transfer any obligations!!!

CCI's president Larry Shipp in his certification (exhibit E in petitioners 9/27/06 filing) explains that it had always been AT&T's practice to transfer the two bad debt obligations within 2.1.8 but not the S&T obligations. The AT&T TSA's clearly show the two bad debt obligations being transferred/assumed between Petitioners and PSE.

AT&T's counsel on June 26th 2006 conceded to Judge Bassler:

> They submit a Certification by CCI's President, Larry G. Shipp, that allegedly "clarifies the nature and type of obligations transferred with the traffic [at issue]." **But there was no dispute on this subject.**

Despite the fact that AT&T counsel had agreed with the Mr Shipp certification that the only two obligations on the TSA were transferred AT&T conjures up this story that there were NO obligations transferred.

AT&T decided to wait 10 years to introduce this new scam defense despite the fact that section 2.1.8 has a 15 day statute of limitation. Petitioners detail the 15 day statute of limitations extensively on page 145 of petitioners 1/31/07 filing See: Chapter **XXX AT&T Failed the 15 day Statute of Limitations Evaluation Period Within Section 2.1.8**

BTN's is an acronym for Billed Telephone Numbers. There is nothing contained in any of the AT&T TSA's that state that CCI or PSE was seeking to modify section 2.1.8's obligation language. Nothing in the handwritten notes directs AT&T to change at all what the tariff normally mandates as the proper allocation of obligations.

The FCC Decision at exhibit B pg.3 to petitioner's initial filing clearly understood the notations:

> At the bottom of each TSA**, in handwriting**, these parties directed AT&T to

> move the "Traffic Only" on each plan to PSE. The January 13th cover letter, under which these nine TSA's were forwarded, directs AT&T to "**move the locations associated with these plans [but] not in any way to discontinue the plans.**" (Exhibit H to petition). In this way, CCI and PSE attempted to move to PSE the end-user traffic associated with each of the nine CSTPII/RVPP plans, but not to move the actual plans themselves.

Petitioners Have Not Changed Its Position

AT&T July 18 2007 page 25:

> Finally, Mr. Inga continues his practice of changing his positions to suit his immediate purposes even as he denies this very conduct. Taking issue with AT&T's characterization of the Commission's decision and the D.C. Circuit ruling, Mr. Inga claims that "[w]hat the D.C. Circuit reversed was the FCC s decision that §2.1.8 *did not allow* 'traffic only' transfers." Opp. at 43 (emphasis added). But his companies told Judge Bassler that, as result of the D.C. Circuit's ruling, they "went from an FCC decision . . . that [their] transaction was *not prohibited to* a D.C. decision that the transaction was expressly permissible." Exh. 28 attached hereto at 2 (emphasis added).

There has been no change in petitioner's position. Petitioners will gladly further clarify its position.

Judge Politan asked the FCC one question:

> whether section **2.1.8** [of AT&T's Tariff FCC No. 2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction.

AT&T attempts to again confuse the issue because the FCC used section 2.1.8 to interpret which obligations transfer on a "traffic only" transfer but used section 3.3.1.Q bullet 4 to theorize that the bulk MOVEMENT OF TRAFFIC could be done by deleting accounts off one plan and adding accounts to the new plan. This can actually be done but there are additional benefits to using the bulk transfer section 2.1.8 and that is why petitioners used 2.1.8. AT&T's senior counsel Charles Fash was equally confused over the interpretation of 2.1.8 and he also stated that 3.3.1.Q bullet 4 was the way to move traffic. This is yet further evidence of 2.1.8 being non explicit as AT&T's own senior counsel did not understand 2.1.8. See Fash exhibit H in petitioners 9/27/06 filing.

The FCC recognized petitioners **request** was under 2.1.8 which it believed was the wrong section to movement of accounts but decided in petitioners favor:

FCC Ruling: page 6 exhibit B in petitioners 9/27/06 filing.

> We conclude that **section 2.1.8** of AT&T's tariff did not address or govern CCI's and PSE's **request** and that its respective tariffs with CCI and PSE permitted the **movement of traffic** at issue here.

The following are a just a few DC Circuit statements from its Decision that 2.1.8 permits traffic only transfers as well as plan transfers. (Exhibit C in petitioners 9/27/06 filing)

> **I)** Pg. 11 "In sum, the FCC clearly erred in ruling that Section 2.1.8 of AT&T Tariff FCC No. 2 does not apply to a transfer of "traffic."
> **II)** DC Court Decision: page 8 "Absent such reliance, the commission provides us with little reason why the plain language of Section 2.1.8 fails to encompass transfers of traffic alone."
> **III)** Pg.10 "As the foregoing discussion indicates, we find the Commission's interpretation implausible on its face. First, the plain language of Section 2.1.8 encompasses all transfers of WATS, and not just transfers of entire plans."

So with respect to Judge Politan's question regarding whether 2.1.8 allows "traffic to transfer under a tariffed plan without transferring the plan itself in the same transaction" --- Petitioners did indeed go from an FCC decision which stated petitioners "traffic only" transfer request under 2.1.8 was not prohibited under 2.1.8 (because the FCC believed it was permissible under 3.3.1.Q bullet 4) to a DC Circuit decision which clearly stated that the movement of "traffic only" was expressly permissible under 2.1.8.

The DC Circuit never did change the FCC's position on which obligations transfer on a "traffic only" transfer as the FCC got that interpretation correct as it agreed with the non vacated Politan decision which AT&T did not appeal. (Politan First Decision at exhibit A in 1/31/07 petitioner filing)

The statement that AT&T quotes is exactly correct:

> Mr. Inga claims that "[w]hat the D.C. Circuit reversed was the FCC s decision that §2.1.8 *did not allow* 'traffic only' transfers."

Indeed the DC Circuit corrected the FCC's account movement theory but not the FCC's correct obligations analysis. Therefore petitioners—as AT&T stated:

> went from an FCC decision . . . that [their] transaction was *not prohibited to* a D.C. decision that the transaction was expressly permissible.

This is indeed true.

It's what AT&T Does Not Address that is Just As Deceptive as the Nonsense it Conjures Up

In AT&T's 6/12/07 filing AT&T attempted to rewrite history. Petitioners have already evidenced how AT&T bypassed its defense to the Third Circuit due to the fact that it shows AT&T's conceding that S&T obligations do not transfer on traffic only transfers under 2.1.8.

Petitioners also evidenced how AT&T attempted to short quote Judge Politan and spin what Politan's referral was. The AT&T con artists got caught in yet another scam attempt and thought it was better to not even address it in hopes the Commission would forget. Petitioners would like to point out this egregious series of lies that AT&T recently used not only in its 6/12/07 filing but in its scam of Judge Wigenton in its April 2nd filing and in its Dec 20th 2006 FCC filing.

AT&T 6/12/07 filing on page 4:

> Following litigation in federal district court, AT&T was ordered to process the transfer of petitioners' plans to CCI, but the court found that the proposed transfer from CCI to PSE presented tariff construction issues within the primary jurisdiction of the Commission. The court therefore ordered that "the issue of the transfer of [petitioners' CSTP II] plans and/or their traffic as between [CCI] and [PSE] and **its compliance or not with the terms of the governing tariff be referred to the [Commission] for adjudication under the doctrine of primary jurisdiction."**

The AT&T con artists want the FCC to believe that the above AT&T excerpt from Judge Politan's Decision ----"compliance or not with the terms of the governing tariff"----refers to transferring plan obligations on "traffic only" transfers.

AT&T's short quote of Judge Politan's statement did not have to do with Judge Politan deciding whether plan obligations transferred on "traffic only" transfers

Furthermore look at this segment of AT&T's quote of Judge Politan:

[petitioners' CSTP II] **plans and/or their traffic** as between [CCI] and [PSE]

Not plan obligations. Judge Politan's Decision focused on whether AT&T could force petitioners

to do a **plan transfer** when it transferred substantial accounts. Judge Politan understood it was never about whether AT&T was demanding plan obligations transferring on a "traffic only" transfer; such a transaction was never permissible under the tariff.

As Politan stated it is either plans or traffic. See exhibit B in petitioners Jan 31st 2007 filing (Judge Politan's March 1996 Decision page 3:

> When the Court issued the Opinion and Order in this matter in May 1995, there was pending before the FCC a request by AT&T that the Commission determine the very issue outlined above. **AT&T had filed Tariff Transmittal 8179 with the FCC seeking guidance on whether Tariff FCC No. 2 contemplated the transfers at issue herein**. The opinion deferred to the FCC's primary jurisdiction ***on that matter.*** Specifically, the Court's Order of that date stated:
>
> Ordered that the issue of the transfer of the aforesaid plans and or their traffic as between Combined Companies. Inc. and Public Services Enterprises of Pennsylvania, Inc. and its compliance or not with the terms of the governing tariff be referred to the Federal Communications Commission for adjudication under the doctrine of primary jurisdiction

As Judge Politan stated the **matter** that he referred was the outcome of Tr. 8179 which is exhibit L in petitioner's 9/27/06 filing. As the FCC can see Tr.8179 **mandated that on a substantial "traffic only" transfer the PLAN must transfer *not just* the plan obligations which AT&T bogusly asserts today was the issue.**

The intention to mislead the FCC as to what Judge Politan referred wasn't just a one time slip up by AT&T. Here is AT&T's Dec 20th 2006 FCC filing page 5

> On appeal, however, the Third Circuit vacated the injunction. Noting that "AT&T objected to the proposal because the [petitioners] did not intend to transfer their potential liability for shortfall and termination charges, which form part of their contracts with AT&T," see Exh. 4, May 31, 1996 Op. at 1**, the Third Circuit held that the district court had "correctly referred *th[is]* question under the doctrine of primary jurisdiction**."

As can plainly be seen by what Judge Bassler exactly stated the referral had nothing to do with whether petitioners intended to "transfer their potential liability for shortfall and termination charges." Judge Politan had already been told by Richard Meade in his November 1995 para 15 (exhibit N in petitioners 9/27/06 filing) that S&T obligations do not transfer on "traffic only" transfers—**that was not the issue.** AT&T simply attempted to scam the FCC.

AT&T also did the same scam on Judge Wigenton on April 2nd 2007. AT&T's April 2nd 2007 letter to Judge Wigenton at page 9 which is exhibit 17 to AT&T's 6/12/07 FCC filing:

> Judge Politan ordered AT&T to permit the transfer of the plans to CCI, but ordered that "**the issue of the transfer of [the] plans and/or their traffic as between [CCI] and [PSE] and its compliance or not with the terms of the governing tariff be referred to the [Commission] for adjudication under the doctrine of primary jurisdiction**" See Exh. M May 19th 1996 Prelim. Inj at 2. After further **skirmishing** before the **District court and the Third Circuit,** plaintiff filed a petition for a declaratory ruling with the Commission in July 1996.

Notice how the AT&T con artists attempt to bypass the second Politan Decision and the Third Circuit as above AT&T used on April 2nd 2007 the same "skirmishing scam" ---

> "After further **skirmishing** before the **District court and the Third Circuit"**

that the AT&T con artists also used in its 6/12/07 FCC filing on page 4:

> Following further **skirmishing** in the **district court and Third Circuit,** petitioners sought a declaratory ruling from the Commission in July 1996

After the first Politan Decision came AT&T Counsel Mead's November 1995 concession that S&T obligations do not transfer on traffic only transfers. The Third Circuit Defenses A) Fraudulent Use[16] and B) conceding that S&T obligations do not transfer on "traffic only" transfers—only on plan transfers but bogusly asserting that petitioners did a plan transfer. These AT&T defenses AT&T wants everyone to forget about because they concede away the case.

Unfortunately Judge Wigenton did not give petitioners the opportunity to brief her and expose this AT&T subterfuge. There is no possible way that AT&T is not deliberately misleading the

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[16] AT&T brief in 1996 to Third Circuit Page 32 para 2 more "Frudulent Use" claims: AT&T notes S&T obligations are CCI's:

> The court also incorrectly concluded that "AT&T has little or no danger of being harmed should the sought-for relief be granted." March 5. 1996 Order at 17 (AA 1389). CCI, the company which now has the obligation to pay AT&T for any **shortfall or termination charges** for the nine plans, has no apparent assets, no credit history of record with AT&T or otherwise, and no apparent means of meeting ***its obligations*** outside of its revenue stream generated by the traffic on its CSTP II plans. See Williams Cert. ¶ 21-24 (AA 641-42).

FCC with its short quote of Judge Politan's decision. The AT&T con artists simply took a small piece out of the Judge Politan referral and spun it to mislead Judge Wigenton as to what the issue actually was before Judge Politan as AT&T attempted to also scam the FCC also on 12/20/06 and 6/12/07.

AT&T's scam was simply to mislead that the issue was whether shortfall and termination obligations transfer on a "traffic only" transfer. AT&T's attempt to reframe what the actual case issues were is simply an egregious misrepresentation. There is little wonder why AT&T's 7/18/07 filing did not address petitioners 6/29/07 exposure of AT&T's scam.

Here is Judge Politan addressing the actual issue:

District Court March 1996 Decision page 17 para 1. Exhibit Reply B in petitioners 1/31/07 filing:

> Thirdly, AT&T **has little or no danger of being harmed should the sought-for relief be granted. Its economic risk, if any, would arguably be covered by an anticipated excess over commitment under Contract No. 516, [FOOTNOTED HERE]** and/or by its increase in revenue by dint of acquiring plaintiffs' customers as they are siphoned into Contract No. 516 by alternative avenues. **Indeed the Court notes that the services provided by AT&T are billed directly to the end user who in turn remits payment directly to AT&T. The instant injunction does not change that, nor does it increase the risk that the end user shall not pay.** Other interested parties --among them, end users themselves --face no threat of harm should the relief sought be granted **[FOOTNOTE FROM ABOVE]**
>
> As previously referenced, **AT&T's counsel represented** that AT&T has initiated suit against PSE for shortfalls. In analyzing the instant motion, however, and in light of the fact that that suit was for the first time referenced orally at the hearing on this motion, the Court is not deterred by such litigation. **Indeed, AT&T's own counsel focused the issue by indicating that the *tariffed obligations* involved herein "are all tariffed obligations, for which "CCI, not PSE" would be obligated.**

AT&T's July 18th 2007 Filing also Totally Ignored Responding to Petitioners 6/29/07 filing on page 42 showing that the FCC's 2003 Decision States that Shortfall Infliction Issue was Already Before the FCC

FCC 2003 Decision Page 14 footnote 94 (Exhibit B to petitioners 9/27/06 filing)

> After receiving AT&T's bills for shortfall charges, 190 of CCI's end users sent letters to the Commission in June and early July of 1996. The Consumer Protection Branch of the Enforcement Division of the Common Carrier Bureau informed these end users that their letters would be treated as **informal comments in this declaratory ruling proceeding.**

Furthermore, the FCC Decision clearly states that both parties addressed the June 1996 shortfall infliction issue in separate filings with the FCC that were added to the FCC proceedings. The FCC's 2003 Decision clearly shows that the dates of the FCC filings by AT&T and petitioners are respectively **August 26, 1996**, and **September 23, 1996:**

FCC 2003 Decision Page 4 para 7 (Exhibit B to petitioners 9/27/06 filing)

> On July 15, 1996, the aggregators filed a petition with the Commission in which, "based on established Commission practice, policies, and precedents, the plain language of § 203 of the Communications Act of 1934, as amended, F.C.C. Rule 61.54(j), and Sections 201 and 202 of the Act," they sought declaratory rulings on four issues. **By separate cover motion**, the aggregators **also sought expedited consideration** of their petition for declaratory ruling because, they alleged, AT&T was **unlawfully billing certain charges to the aggregators' end-users**. AT&T filed Comments in Opposition on **August 26, 1996**, and Petitioners filed Reply **Comments on September 23, 1996.**

Petitioners Clearly Evidenced that AT&T's Assertion that Petitioners Looked to Run from the FCC Because of the 3/23/07 Schwarmann Letter was Completely Bogus-AT&T never Responded

AT&T additionally asserted in its 6/12/07 filing that due to its filing of the April 2nd 2007 letter to Judge Wigenton that contained the 3/23/07 Mr Schwarmann letter ---that this made petitioners run away from the FCC to the District Court and AT&T then asserted that petitioners used as an excuse all evidence it had found. In petitioners 6/29/07 filing on page 86 petitioners pointed out that **prior to AT&T's April 2nd 2007 filing to Judge Wigenton petitioners filed on March**

27th 2007 an email that was also copied to Ms Shetler advising the FCC that AT&T had been refusing to provide publicly filed briefs that answered Judge Basslers question conclusively. AT&T's July 18th 2007 Filing totally disregarded the empirical evidence showing AT&T once again was misrepresenting the facts and simply did not address the following in petitioners 6/29/07 filing:

March 27th 2007: In part states:

> Please ask your counsel to email a copy of these 2 briefs to my counsel Mr. Arleo. This is not a discovery issue. These are briefs that AT&T has already publicly filed. **Unfortunately, due to the AT&T concession, we anticipate AT&T not cooperating to provide the briefs, and Mr Arleo will probably need to ask Judge Wigenton to ask your counsel to provide another courtesy copy.** Maybe AT&T can surprise us so we do not have to ask Judge Wigenton for this, which is normally a professional courtesy. Given the fact that the FCC proceedings are a permit but disclose proceeding we are making ex-parte contact with the FCC and advising the FCC that this **very important concession** by AT&T counsel is coming. AT&T would of course be able to comment. Please let Mr. Arleo know and the FCC know if AT&T will be providing these AT&T briefs.
>
> Petitioners ended up having to ask Judge Wigenton to order AT&T to provide the briefs. AT&T understanding that Judge Wigenton would do so sent the brief.
> Petitioners then asked for the rest of the 1995 and 1996 file and AT&T's Richard Brown said I will have my secretary look for them. About two weeks went by without AT&T "finding" these additional briefs. In that time a counsel formerly used by petitioners discovered them in a box that he did not realize he still had.
> The effort by petitioner's to dig for all the 1995 files came **prior to AT&T's April 2nd 2007 letter** and the new 1995 and 1996 evidence of course had **nothing to do with Tips IRS letter as AT&T misleads the FCC.** Another petitioner statement shows no one was running from the FCC due to the 3/14/07 letter.
>
> > Petitioners will advise the Court that besides the traffic only transfer issue being before the FCC the shortfall issues has been referred to the FCC by the IRS.

This above petitioner statement shows the issues are at the FCC not looking to get away from the FCC as AT&T asserts.

AT&T's 7/18/07 filing Failed to Respond to Petitioners 6/29/07 Excerpt of the 1/23/96 District Court Oral Argument. See Exhibit EE to petitioners 5/24/07 Posted Filing:

See page 28 of exhibit EE petitioners 5/24/07 Posted Filing:

MR. WHITMER: If you look in Mr. Meade's second supplemental affidavit, your Honor, I think he gives you direction.

MR. WHITMER: I'll hand it up to your Honor.
THE COURT: Sure.
(Document handed to the Court.)

MR. WHITMER: **If you look at paragraph 15** [17]
THE COURT: Paragraph 15.
MR. WHITMER: You can look at everything, obviously.
THE COURT: You say look at paragraph 15.
"On October 26, 1995, AT&T Corp. filed Tariff Transmittal No. 9229 with the FCC. Transmittal No. 9229 **addresses the "*problem*" implicated in the CCI-PSE transfer the segregation of assets (locations) from liabilities (plan commitments)** in the following manner. (Relevant pages of Transmittal 9229 are attached hereto as Exhibit E.) Section 2.5.8.B (Shortfall Deposits) gives AT&T the right to demand a deposit to cover shortfall charges in the event: a) the term commitment is greater than one year; b) **the customer is asked to remove locations (by transfer or otherwise) such that the remaining locations would generate charges less than 80 percent of the revenue commitment; and c) the customer's net assets are insufficient to secure against the risk of shortfall or the customer's financial responsibility is not a matter of record. Section 2.1.8 (Transfer of Service) of Transmittal No. 9229 specifies that AT&T has the right to reject the requested transfer if either party fails to pay a required deposit."**
That's it.
MR. WHITMER: **Yes, sir.**

[17] Meade Concession: Exhibit N in petitioners 9/27/06 filing, see paragraph 15 and 16 of Meade certification explaining how 2.1.8 works (plan obligations do not transfer) and how AT&T was to address this problem of separating accounts from liabilities.

Mr Whitmer confirms his co-counsel Mr Meade's interpretation of 2.1.8

Meade November 28th 1995 Certification at para. 6 further clarified his interpretation of 2.1.8:

> Under CCI's requested location transfer, CCI would have nominally remained the customer of record for the CSTPII' s" and thus **would have remained liable for "shortfall and termination charges.** The tariff prohibits such a scheme to avoid payment of charges and permits AT&T to suspend the customer's right to transfer service as part of such a scheme.

Mr Meade's assertion that there was a scheme to avoid shortfall charges is completely false as the FCC 2003 Decision correctly understood that the plans were pre June 17th 1994 grandfathered and thus immune from S&T liability. Additionally the plans had already exceeded their fiscal year commitments by over $2 million dollars at the time of the "traffic only" transfer. How you can suspect to be defrauded of S&T charges when the plans had already met their fiscal year revenue commitment and were pre June 17th 1994 immune in any event shows the misrepresentation AT&T enacted to stop the permissible transaction.

The only relevant part of the Meade certification excerpt cited above is that Mr Meade understands that S&T obligations do not transfer on "traffic only" transfers. Mr Meade's assertion that it could have only been stopped was with use of AT&T's fraudulent Use provision at 2.2.4. Section 2.1.8. never mandated S&T had to transfer on a "traffic only" transfer.

More evidence of AT&T counsel Whitmer's conceding AT&T's interpretation of section 2.1.8 that S&T obligations do not transfer on "traffic only" transfers are exhibited within petitioner's FCC filing Date Received/Adopted: *05/22/07* at exhibits D, E, F G, and P to follow:

Exhibit D:

> Mr. Inga, you know, do you not, that if the service, except for the home account -- or Mr. Yeskoo called it the "lead account"-- is transferred to PSE, the shortfall and termination liabilities remain with Winback & Conserve isn't that correct?

Exhibit E

> In response, plaintiffs have tried from the outset of this action to convince this Court that their tariffed shortfall and termination liabilities to AT&T are illusory, thereby hoping to persuade the Court to order AT&T to permit the two-step transfer without either requiring CCI to furnish a security deposit or requiring

PSE to accept the plans (and all of their liabilities) in addition to the traffic.

Exhibit F

THE COURT: Wait. Let me get to page 23 of Mr. Whitmer's brief. It says "If PSE took an assignment of the plans from Winback & Conserve, thereby accepting shortfall and termination liability, AT&T would effect transfer."

Exhibit G

The reason is CCI originally was going to take the plans, your Honor. This is an important distinction. They were going to take the plans so that the shortfall and termination liability -- the shortfall and termination liability would have followed the plans to CCI. It was because CCI was financially incapable of satisfying shortfall and termination that we, AT&T demanded a security deposit of $13 million.

Exhibit P

WHITMER questioning CCI: You understood, did you not -- at least you thought you understood -- if you transferred only the service but not the plans. PSE would not have any liability for shortfall and termination? Correct?

Also see petitioners FCC filing Date Received/Adopted: 04/05/07 at exhibit A which is page 5 of AT&T's November 28th 1995 brief to NJ District Court Judge Politan by AT&T counsel Mr Whitmer:

First, a transfer of substantially all of the locations on the plans would have the result of increasing the potential shortfall to AT&T. Secondly the possibility that CCI will be unable to satisfy its **tariffed obligations** because it is transferring its principal assets -- the end-user accounts---to PSE would leave CCI with no apparent revenue stream to meet its **existing commitments** and no apparent assets from which to satisfy **potential shortfall liability**. These charges are all **"tariffed" obligations,** for which CCI**, "not PSE"** (which would have the revenue stream to satisfy such charges), would be obligated.

Also see Mr Whitmer's Feb 6th 1995 letter to petitioners at exhibit X in petitioners 9/27/06 filing:

Mr. Inga's efforts to transfer these end users and leave the plans intact with their commitments, …..AT&T will seek to enforce its rights in the **event shortfall and termination charges become due "under the tariff"** and will hold Mr. Inga personally liable for his conduct intended to deprive AT&T of its **tariff charges**.

Mr. Whitmer above statement associated petitioner's "traffic only" transaction to what tariff section 2.1.8 mandates.

Petitioner's needed to request Judge Wigenton to order AT&T to provide petitioners with a copy of AT&T's November 28th 1995 brief that contained some of Mr. Whitmer's concessions. AT&T was repeatedly asked for its brief after petitioners re-read a Judge Politan Decision referencing a specific Mr Whitmer's concession. AT&T totally ignored and delayed petitioner's requests for its 1995 and 1996 briefs; obviously AT&T recognized the Mr Whitmer concessions. See petitioners request to Judge Wigenton for these briefs at petitioners FCC filing Date Received/Adopted: 03/30/07on page 13 under:

D. AT& T Should Provide A Courtesy Copy Of Previously Filed Briefs

See also petitioners FCC filing Date Received/Adopted: 03/27/07 which is a letter to AT&T's Tom Umholtz that also addresses AT&T's attempt to hide the Mr. Whitmer Concessions.

It not Just What Mr Whitmer Conceded

Whitmer's Actions Speak Even Louder than His Concession Words

It was not until petitioners filed its suit with the District Court did petitioners make the correct tariff statement that the transferors plans revenue commitments and associated shortfall and termination costs do not transfer on "traffic only" transfers. The evidence shows that AT&T---**BY ITS VERY ACTIONS**—by issuing Mr Whitmer's February 6th 1995 letter (exhibit X in petitioners 9/27/06 filing) ---that AT&T clearly acknowledged that under the tariff the plan obligations of the transferors plan must stay with the transferors plan, as the many Mr. AT&T's actions show AT&T running to the FCC to retroactively enact Tr. 8179 and Mr Whitmer warning petitioners what its transaction means **as per the tariff.**

AT&T tried to cover for Mr Whitmer by asserting that Mr Whitmer's many statements (including agreeing with Mr Meade's certification at para 15 regarding section 2.1.8's interpretation) were not concessions but AT&T failed miserably.

Of course even though Mr Whitmer is still a senior partner with AT&T's current counsel Day Pitney, Mr Whitmer knows better than to certify to AT&T's bogus cover-up for him. Mr Whitmer may have asked to be taken off the case after he misrepresented to Judge Politan in Jan 1996 that Tr. 9229 was still pending when he clearly understood that Tr. 9229 had already gone into affect prospectively moths earlier in Nov 1995. Petitioners guess that AT&T will assert that the following Mr Whitmer misrepresentations to the District Court were also taken out of

context:

Exhibited within petitioner's FCC filing Date Received/Adopted: 05/22/07 at exhibit AA:

> If the tariff submission that is before you which you described as the explosion is, in fact, put into place, your Honor,

Exhibited within petitioner's FCC filing Date Received/Adopted: *05/22/07* at exhibit BB:

> If the Commission permits AT&T to go forward with this tariff submission, as I think they will,

Exhibited within petitioner's FCC filing Date Received/Adopted: *05/22/07* at exhibit DD:

> Judge Politan: Let me ask you this question. Where is this thing now? (Referring to brief.) What phase of the proceeding?
> MR. WHTMER: It is pending, as I understand.

Mr Whitmer simply got caught by Judge Politan because after he intentionally lied to the Court as he pointed Judge Politan to the Meade certification in which Meade conceded at para 16 (exhibit N in petitioners 9/27/06 filing) that Tr. 9229 was already prospectively in affect and not pending for months. AT&T counsel Mr Brown and Mr Barrillari simply sat in Judge Politan's Court and did not correct Mr Whitmer's misrepresentations to Judge Politan.

So now the FCC now hears from Mr Whitmer's replacements as to what Mr Whitmer supposedly meant. Let's hear from Mr Whitmer. Let's see if Mr Whitmer will certify to what he meant. No way will you get Mr. Whitmer to involve himself in this case anymore. He is happy to have gotten out of the case without Judge Politan sanctioning him or having his license suspended or revoked.

Likewise it is no coincidence that we no longer hear from AT&T's former counsels Mr Carpenter, Mr Friedman, or Mr Fash all of whom are easy to get a hold of by AT&T. Each of these AT&T counsels asserted that S&T obligations do not transfer under 2.1.8 on a "traffic only" transfer. The FCC will see no certifications from these AT&T counsel as to what they supposedly meant.

Consider the following by AT&T counsel Fred Whitmer in his March 30th 1995 AT&T brief to Judge Politan prior to the District Courts First May 1995 Decision. See exhibit K page 11 in petitioners FCC filing Date Received/Adopted: 05/09/07:

> The **public interest**, moreover, is served by denying the plaintiff's motion and referring this matter to the FCC on the grounds of primary jurisdiction. **With the core issue regarding plaintiff's second "proposed" transfer already before the FCC in the form of transmittal *No. 8179***

Tr. 8179 **was an industry wide change**. The fact that Mr. Whitmer conceded in March 1995 that petitioners "traffic only" transfer was before the FCC in the form of the **industry wide tariff Tr 8179 change** is definitive that Mr. Whitmer recognized that petitioners "traffic only" transfer was no different than what all other aggregators were doing and that is what Tr. 8179 was attempting to stop. Therefore AT&T's cover-up for Mr. Whitmer's Nov. 1995 concession and the dozens of other Mr. Whitmer concessions (with AT&T "proposal defense") is obviously a bogus defense.

Mr Whitmer agreed with Mr Meade's analysis of 2.1.8 which clearly ties in the remaining locations on the transferors plan with the transferors' plans remaining revenue commitment that gives rise to the shortfall obligation on the transferors plan:

> **b)** the customer is asked to remove locations (by transfer or otherwise) such that the **remaining locations would generate charges less than 80 percent of the revenue commitment**; and C*)* the customer's net assets are insufficient to secure against the risk of **shortfall** or the customer's financial responsibility is not a matter of record.

Mr Meade's certification then went on and explained that this **AT&T problem** was not just unique to the CCI –PSE transfer as AT&T attempted to resolve "its problem" with the 2.1.8 **for the entire industry:**

AT&T Counsel Mr Meade certified to District Court Judge Politan that the proposed Tr. 8179 language [to be added as 2.1.8(c)] had a "**broad effect"** (i.e. it affected the entire industry)–not just a so called proposal outside section 2.1.8 by only petitioners:

See exhibit N to petitioner's 9/27/06 filing:

> The FCC was concerned that the modified language in Section 2.1.8(c) would have had a "**broader effect"** than was needed to achieve AT&T's specific purpose, which was simply to clarify its existing right to prevent a location transfer intended to avoid payment of charges, and so would constitute a substantive tariff change.

Mr. Meade noted in paragraph 16 exhibit N to petitioners 9/27/2006 filing that since it was a new change to 2.1.8 it would not be determinative of the issue presented on the CCI/PSE transfer. Petitioners transfer was in effect grandfathered:

Mr Meade certification to District Court (Exhibit N pg.7 para 16 of initial filing.)

> The Deposit for Shortfall Charges included in Transmittal No. 9229 is a "new concept" that meets AT&T's **business concern** more directly, without addressing the question of intent. Because this is new, it will apply only to newly ordered term plans, and so would not be determinative of the issue presented on the CCI/PSE transfer.

Very Simple: AT&T Counsel Meade wouldn't have had a stated *"problem" and "business concern" under 2.1.8 if* AT&T's new theory were true---that revenue commitments and their associated S&T obligations transferred on "traffic only" transfers.

Meade's stated "*problem"* and "*business concern"* with Section 2.1.8 was because the S&T obligations never transferred on "traffic only" transfers! If S&T obligations actually transferred there would be no "*problem"* or "*business concern"! But because there was a problem AT&T added Deposit Requirements to Address its stated "problem" and "business concern"*

Mr Meade also made it clear that S&T obligations do not transfer when he filed on Feb 27th 1995 AT&T's reply to the FCC opposing industry wide petitions to reject Tr. 8179. See page 7 of exhibit A of petitioners FCC filing Date Received/Adopted: 05/17/07

> AT&T already has the right to protect itself when a customer seeks to transfer the locations **(but not the commitment)** ***associated with an AT&T term plan*** or Contract Tariff to a third party if, as a result, the customer's net value and ability to pay tariffed charges would be significantly diminished.

AT&T of course failed to address its counsel Mr Meade's concession of 2.1.8's obligations allocation in AT&T's Feb 27th 1995 reply to the FCC opposing the industry wide petitions to reject Tr. 8179. See at page 11 footnote 16 in AT&T's Feb 27th 1995 reply at exhibit A of petitioners FCC filing Date Received/Adopted: 05/17/07:

> PSE, TRA[18] and TFG also assert the customer **may choose in good faith to pay the shortfall charge or assume the risk of doing so** if it is unable to bring in sufficient replacement traffic "**prior to the commitment attainment date"**. PSE Petition at 6, TRA Petition at 14-15; TFG Petition at 7, 11 & 14. The examples used by Petitioners for the most part **deal with situations** where a transfer would **not likely result in a shortfall,** and ***thus are "unaffected"* by the tariff.**

Mr. Carpenter during Third Circuit Oral (Pg 43 exhibit O in petitioners' 9/27/06 filing conceded that AT&T lost its Substantive Cause Pleading with the FCC in 1995 when the FCC decided that S&T obligations stay on the transferors plans.

David Carpenter:

> The FCC asked us to withdraw the complaint because **the FCC thought we had done more in the tariff language than codify** what the tariff already meant because it went beyond prohibiting these sorts of transfers of plans that would affect transfers of individual locations.

AT&T never addressed petitioners FCC filing

Date Received/Adopted: 05/11/07 filing.

Petitioners detail within its 5/11/07 FCC filing why under 2.1.8 the unexpired portion of any applicable payment period conclusively establishes that AT&T's "All Obligation" theory is bogus. AT&T's bogus theory under 2.1.8 would mandate that there would be two **primary** customers simultaneously responsible for end-users that did not transfer ----which would conflict with all tariff sections. It is contrary to the tariff that a transferee can be obligated for accounts not transferred to it.

[18] TRA is the Telecom Resellers Association: which represented hundreds of companies—all of which were up in arms petitioning the FCC to reject AT&T's obvious change in section 2.1.8. AT&T's assertion that petitioners were attempting a transfer outside 2.1.8 is countered by the uproar from the entire reseller/aggregator community.

AT&T Never Addressed Its Concession that Deposit Requirements were not Required On "Traffic Only" Transfers—Only Plan Transfers.

Petitioners detailed within its filing **Date Received/Adopted:** *05/09/07* on page 8-9 AT&T's concession that Deposit requirements did not apply to "traffic only" transfers–only plan transfers under 2.1.8. This conclusively establishes that revenue commitments did not transfer.

The FCC 2003 Decision (exhibit B in petitioners 9/27/06 filing) made note of AT&T's concession on page 6 footnote 44.

> On a separate point, we note that the deposit provision of AT&T's tariff is not implicated here. In their first and third requests, petitioners seek, *inter alia*, declarations that **AT&T had no basis to require a deposit to effect the movement of traffic without the associated plans.** *See* Petition at 7-8. AT&T, however, **does not argue** that any deposit was required to effect the movement of **traffic from CCI to PSE** and notes that **the deposit requirement related to the earlier transfer from the Inga Companies to CCI**. *See* Opposition at 9 n.8.

AT&T asserted that the plan transfer from Inga to CCI invoked a deposit requirement not the "traffic only" transfer from CCI to PSE—because the revenue commitments stayed with CCI plans on the "traffic only" transfer.

AT&T Never Addressed Its 2003 Position to the FCC that S&T Obligations Plan Must Stay With the Customer of Record

AT&T's 2003 Further Reply Comments to FCC on page 4: See Exhibit H in petitioners FCC filing Date Received/Adopted**:** *05/09/07*

> As AT&T's customers-of-record, **Petitioners were responsible for the tariffed shortfall and termination charges.** Section 3.3.1.Q of AT&T FCC No 2 See also AT&T Further Comments filed April 2nd 2003 ("AT&T's Further Comments 2003") at 7-8.

Correct. As long the transferor plan remains the Customer-of –record, the petitioners maintain responsibility for the plans revenue commitment and associated S&T Obligations under the tariff. AT&T is referencing in its quote the tariff section 3.3.1.Q (CSTPII/RVPP General Provisions) which is exhibit D in petitioners 9/27/06 filing---See bullet 10.

Tariffs Are to be Interpreted According to the Reasonable Construction of their Language

I) Under AT&T's bogus "all obligation" theory for 2.1.8 the transfer**ee** (PSE) would ***become*** liable for the transferors termination obligation if the transferor (CCI) kept its plan and terminated its plan. Under AT&T's bogus "all obligation" theory for 2.1.8 the transferee (PSE) would have no control of the transferors'(CCI) decision to terminate its plan which the transferor CCI/Inga kept in its "traffic only" transfer; however the transferee (PSE) under AT&T's bogus "all obligations" theory would **become** obligated for the transferors' (CCI/Inga's) termination charges.

Remaining jointly and severally liable does not pertain to "traffic only" transfers despite AT&T's reversed position that it does, however even under AT&T's bogus theory that **remaining** jointly and severally liable does apply to "traffic only" transfers 2.1.8's **remaining** jointly and severally liable language is contrary to AT&T's bogus theory. Under AT&T's bogus scenario the transferee (PSE) is **initially never obligated** for the transferors' termination obligation to begin with **so it can not as per 2.1.8 *"REMAIN"*** jointly and severally liable as per 2.1.8. This is conclusive tariff evidence that the **remaining** jointly and severally liable provision within 2.1.8 does not pertain to obligations which remain "at the time of transfer" with the transferor—on a "traffic only" transfer---like termination and shortfall obligations. Therefore this also conclusively establishes that S&T obligations do not transfer on a "traffic only" transfer.

II) Under AT&T's bogus "all obligation" theory for 2.1.8 the transferee would be responsible for bad debt on accounts that were never transferred to it. There is not even a mechanism to do this as under the tariff section 3.3.1.Q bullet 8 the bad debt is debited from the RVPP Credit Pool of the plan that the accounts are on. You can't debit the transferees plan (RVPP Credit Pool) for bad debt of accounts that are not on the plan if they are not transferred. This obviously would not be a reasonable construction of the 2.1.8.

III) Likewise under AT&T's bogus "all obligation" theory for 2.1.8 the transferee would have to accept the unexpired portion of minimum applicable payment period on accounts that were never transferred to transferee. As noted in petitioners 5/11/07 filing this could amount to substantial charges for accounts never transferred. This obviously would not be a reasonable construction of the 2.1.8.

IV) Under AT&T's bogus "all obligation" theory for 2.1.8 it would not be a reasonable construction of tariff section 2.1.8 for the transferor to transfer a few accounts to a transferee and the transferor would be able to divest itself of its entire commitment. This obviously would not be a reasonable construction of the 2.1.8. The revenue commitment must stay with the transferor who must put up the deposit when making the commitment.

V) Under AT&T's bogus "all obligation" theory for 2.1.8 it would not be reasonable tariff construction for AT&T to have additional revenue commitments afforded AT&T on the same traffic transferred if the transferor had already met its fiscal year commitment on that same traffic. AT&T would be doubly compensated on the same traffic transferred. This would lead to discrimination amongst AT&T customers as the transferees would have to make increased commitments on traffic received but would not receive lower rates.

VI) Under AT&T's bogus "all obligation" theory for 2.1.8 it would not be reasonable tariff construction for AT&T to expect S&T obligations to transfer on "traffic only" transfers when 2.1.8 does not explicitly state that S&T obligations are required to transfer on "traffic only" transfers. The two obligations that are listed are neither revenue commitments.

VI) Under AT&T's bogus "all obligation" theory for 2.1.8 there simply would be very little "traffic only" transfers because the overwhelming majority of "traffic only" transfers the transferee would have to assume 100% of a transferors revenue commitment but accept less than all the accounts.

Clearly the reasonable construction of the 2.1.8 tariff provision could never be construed in such an unreasonable manner as to transfer plan obligations

CONCLUSION

Even though the FCC has stated that there will be no ruling on the sanctions motions---- all of the foregoing evidence makes clear, AT&T has engaged in the rankest forms of deception, dishonesty, and manipulation and is thus deserving of the severest sanctions.

The numerous blatantly false, misleading, and disingenuous claims in all of AT&T's submissions simply confirm the obvious: that AT&T is incapable of restraint or responsible advocacy and AT&T will simply continue its abusive tactics.

The Commission has been given an absolute lay-up decision in favor of petitioners due to the incredible amount of tariff evidence and supporting AT&T concessions. Petitioners have waited 12 years and plead with the FCC to issue declaratory rulings on all Declaratory Rulings requested by petitioners.

Tips president Al Inga understands that there may be punishment for willful misstatement of the facts presented by Tips involvement with the FCC regarding the IRS letters.

Respectfully Submitted
Petitioner's:
One Stop Financial, Inc
Winback & Conserve Program, Inc.
Group Discounts, Inc.
800 Discounts, Inc
&
Tips Marketing Services, Corp

/s/ Al Inga
Al Inga President